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Final Panel Working DRAFT

December 2006

CHAPTER 2

IMPROVING IMPLEMENTATION OF PERFORMANCE-BASED SERVICE ACQUISITION (PBSA) IN THE FEDERAL GOVERNMENT

REPORT OF THE ACQUISITION ADVISORY PANEL

December 2006

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I. Introduction and Background

In keeping with the statutory charter of the Panel to review Federal acquisition laws and regulations as well as government-wide acquisition policies “with a view toward ensuring effective and appropriate use of commercial practices and performance-based contracting..”

- the Panel has conducted an in-depth exploration of PBSA with an aim of discerning why the methodology has fallen short of expectations, and to make constructive recommendations for enhancing PBSA in the future.

FINDINGS	RECOMMENDATIONS
1: Despite OMB Target, Agencies Remain Unsure When to Use PBSA	<p>1: OMB’s Government-Wide Quota of Requiring 40% of Acquisitions be Performance-based Should be Adjusted to Reflect Individual Agency Assessments and Plans for Using PBSA</p> <p>2: Modify FAR Parts 7 and 37 to Include Two Levels of Performance-based acquisition: Transformational and Transactional. OFPP Should Issue More Explicit Implementation Guidance and Create a PBSA “Opportunity Assessment” Tool to Help Agencies Identify When They Should Consider Using Performance-based Acquisition Vehicles</p>
<p>2: PBSA Solicitations and Contracts Continue to Focus on Activities and Processes, Rather than Performance and Results</p> <p>3: PBSA’s Potential for Generating Transformational Solutions to Agency Challenges Remains Largely Untapped</p> <p>4: Within Federal Acquisition Functions, There Still Exists a Cultural Emphasis on “Getting to Award.”</p> <p>5: Post-Award Contract Performance Monitoring and Management Needs to Be Improved</p>	<p>3: Publish a Best Practice Guide on Development of Measurable Performance Standards for Contracts</p> <p>4: Modify FAR Parts 7 and 37 to Include an Identification of the Government’s Need/Requirements by Defining “Baseline Performance Case” in the PWS or SOO. OFPP should Issue Guidance as to the Content of Baseline Performance Cases</p> <p>5: Improve Post-Award Contract Performance Monitoring and Management, Including Methods for Continuous Improvement and Communication through the Creation of a Contract-Specific “Performance Improvement Plan” that would be Appropriately Tailored to the Specific Acquisition</p> <p>6: OFPP Should Provide Improved Guidance on Types of Incentives Appropriate for Various Contract Vehicles</p> <p>7: OFPP Should Revise the Seven Step Process to Reflect the Panel’s new PBSA Recommendations</p> <p>8: Contracting Officer Technical Representatives (COTR’s) should Receive Additional Training and be Re-designated as Contracting Officer Performance Representatives (COPR’s)</p>
<p>6: Available Data Suggest that Contract Incentives Are Still Not Aligned to Maximize Performance and Continuous Improvement</p> <p>7: FPDS Data Are Insufficient and Perhaps Misleading Regarding Use and Success of PBSA</p>	<p>9: Improved Data on PBSA Usage and Enhanced Oversight by OFPP on Proper PBSA Implementation Using an “Acquisition Performance Assessment Rating Tool” A-PART</p> <p>10: OFPP Should Undertake a Systematic Study on the Challenges, Costs and Benefits of Using Performance-Based Acquisition Techniques Five Years from the Date of the Panel’s Delivery of Its Final Report</p>

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A. Introduction To Performance-Based Service Acquisition

Performance-based Service Acquisition (PBSA), formerly called Performance-based Contracting,¹ is an approach to acquisition that focuses on describing end results (rather than dictating the manner in which the contracted work is to be done) and measuring and compensating vendors on the basis of whether or not those results were obtained.

PBSA employs a number of techniques, strategies and frameworks for the definition of program requirements, acquisition planning, competition management, performance measurement, contract structure, payment structure, and post-award contract monitoring and management. PBSA was developed as part of an overall movement in government management toward commercial business practices. PBSA is also reflective of the government-wide movement toward performance-based program management as reflected in the passage of the landmark Government Performance and Results Act (Pub. L. No. 103-64)

Proponents of PBSA believed the government's acquisition system was characterized by a lack of opportunity for innovation, a focus on process not results, and, higher than anticipated costs. Those failings, it was asserted, could be addressed through a more commercial approach to services acquisition; one that focused on mission outcomes to be achieved, rather than day-to-day management of contractors.

History offers a myriad of attempts by the Federal Government to exploit performance-based contracting approaches to acquire services. The first attempts to implement performance-based approaches can be documented as far back as 1969 with an outcomes-based approach to contracting developed by the then-Department of Health, Education and Welfare. Several other government agencies (particularly in the Department of Defense) issued internal policies to encourage the use of performance standards in certain kinds of contracts.

Government-wide PBSA policy was first contained in Office of Federal Procurement Policy (OFPP) Letter 91-2 on service contracting that was issued on April 9, 1991—instructing federal agencies to use PBSA “to the maximum extent practicable.”² This document stated that the new policy was prompted by internal agency investigations, Government Accountability Office (GAO) reports and OFPP studies that documented numerous instances of unsatisfactory performance and contract administration problems that coincided with an increase in the Government's acquisition of services.

¹ “Performance-based service acquisition (PBSA)” has generally replaced “performance-based contracting (PBC)” as the current terminology to be applied to this acquisition approach. The two terms can be used interchangeably for purposes of this discussion.

² OFPP Letter 91-2 __ (Apr. 9, 1991)

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To reinforce its policy encouraging the use of PBSA, the OFPP has developed a PBSA support website that identifies several purported benefits when contracts are structured to focus on the desired business outcomes. These possible benefits include:

- Increased likelihood of meeting mission needs
- Focus on intended results, not process
- Better value and enhanced performance
- Less performance risk
- No detailed specification or process description needed
- Contractor flexibility in proposing solution
- Better competition: not just contractors, but solutions
- Contractor buy-in and shared interests
- Shared incentives permit innovation and cost effectiveness
- Surveillance: less frequent, more meaningful
- Variety of solutions from which to choose³

In 2001, the current Administration elevated performance-based acquisition to a Presidential initiative and assigned specific implementation goals. OMB directed that agencies use performance-based techniques on a specific percentage of the total eligible service contracting dollars each fiscal year as follows:

<u>Fiscal Year</u>	<u>Percent</u>
2002	20
2003	30
2004	40
2005	40 (changed from original 50% by OFPP ⁴)

In 2003, the Congress weighed in with its strong support for performance-based acquisition when it passed the Service Acquisition Reform Act.

B. Current Federal Implementation of Performance-Based Acquisition

Over the past year and a half, the Panel received a wide range of testimony, and reviewed a number of studies, reports and audits regarding performance-based contracting methodologies and their implementation. Several private sector and Federal agency witnesses gave a strong endorsement for the methodology, and were able to cite acquisitions where it had been used effectively to both enhance performance and achieve cost savings. Others paint a less rosy picture. Various review organizations, including the GAO, have raised concerns about PBSA

³ See OFPP, *Seven Steps to Performance-based service acquisition* [year], http://www.acquisition.gov/comp/seven_steps/index.html

⁴ Memorandum from _____ to Chief Acquisition Officers and Senior Procurement Executives, *Increasing the Use of Performance-Based Service Acquisition* (Sept. 7, 2004) (on file with _____).

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implementation, calling into question whether there is adequate understanding among agencies on when and how to successfully carry out performance-based service acquisition. Additionally, there is a concern that insufficient data exists on the impact of PBSA on the government-wide acquisition process, cost and performance.

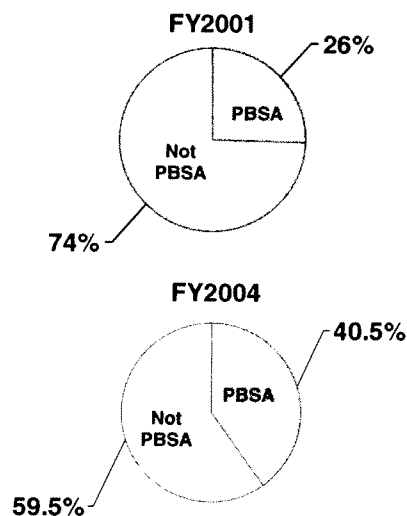
Indeed, one of the issues the Panel seeks to address is the dichotomy between the relatively positive information on performance-based practices the Panel received from private sector experts - particularly those involved in transformational business process change - and the skepticism expressed by a number of government practitioners on how well senior leadership, and acquisition and program staff understand and apply PBSA methods.

Progress on Meeting PBSA Targets, But Data Seems Suspect

As Federal agencies responded to the initial 1991 OFPP PBSA policy as well as the 2001 PBSA targets, the federal acquisition landscape changed. The result – whether through erudite PBSA application or brute force – has been a steady increase in spending on contract vehicles that agencies identify as performance-based.

Data from the Federal Procurement Data System shows federal agencies are meeting the Administration's goals. According to agency reporting, in 2001, 25.5% of eligible contract dollars were identified as performance-based contracts (percentage in accompanying chart does not track due to rounding). In 2004, that number moved up to 40.5% - exceeding the goal by .5%.

For goaling purposes, determining whether a contract qualifies as a PBSA is a three-step process. First, agencies must determine that the sum of the ultimate contract value or sum of the dollars obligated will be over \$25,000. Next, agencies must establish whether the contract is eligible for PBSA methodologies.



Growth in PBSA contracts between 2001 & 2004, shown as a percentage of contract dollars considered to qualify as eligible for performance-based methods.

For this determination, OFPP excludes services exempted by the FAR: Architect-engineer services acquired in accordance with 40 U.S.C. 541-544 (FAR Part 36); Construction (FAR Part 36); Utility services (FAR Part 41); or Services that are incidental to supply purchases.⁵

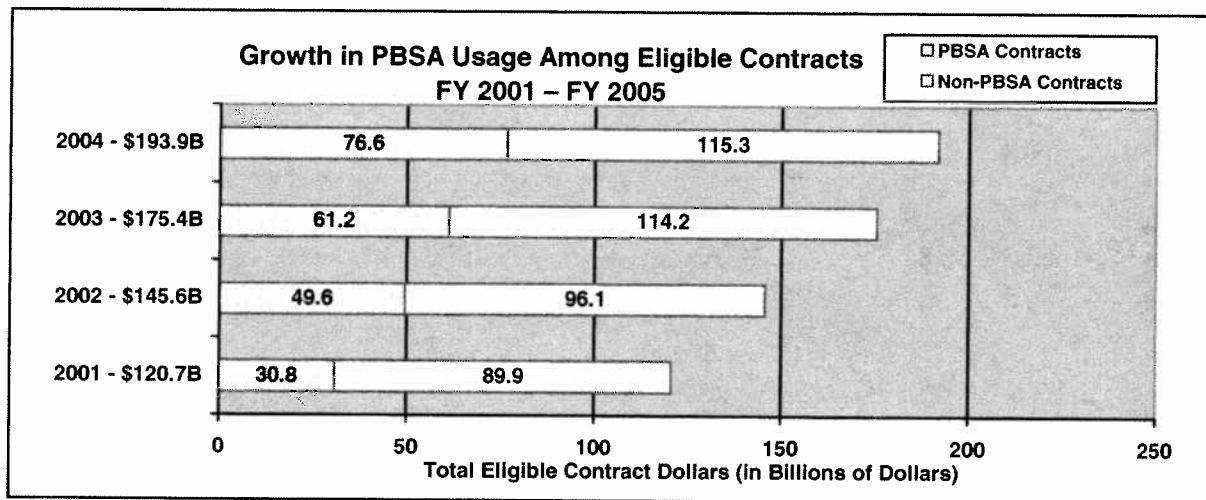
⁵ FAR 37.102 In addition to FAR exemptions, OFPP excludes the following services: Research and development, to include Basic Research, Applied Research, Advanced Technology Development, Demonstration and Validation, and Engineering and Manufacturing Development (FPDS codes A**1-A**5); Professional Medical Services (not facility-related, Codes Q501-Q527); and Tuition, Registration and Membership Fees (Code U005).

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Once a contract is determined to be PBSA-eligible, FPDS requires that more than 50 percent of the requirement, as measured in dollars, be performance-based in order to receive the PBSA designation. The table below depicts, from Fiscal Years 2001 to 2005, the total number of contract dollars found to be eligible for PBSA methodologies as reported by Federal agencies. That number is then divided into two categories: 1) PBSA-eligible contracts implemented as performance-based and, 2) PBSA-eligible contracts that were *not* implemented with PBSA methodologies.⁶



The Panel notes there is significant discussion about the nature of the PBSA data being reported to FPDS. A number of commenters have expressed concern that some contracts reported as PBSAs may not, in fact, meet the letter or spirit of performance-based contracting. In one example, when testifying before the panel, Ms. Jan Menker of the Concurrent Technologies Corporation remarked, “There are any number of solicitations coming out that say, we’re performance based. But when you read them, there’s no outcomes; there’s no real objectives identified. Statements of work are still fairly specific. It’s an area that needs additional investigation....”⁷

In light of these concerns, the Panel initiated a study to examine the kinds of contracts that are being reported as PBSA’s in FPDS. Results of the Panel’s survey of contracts are outlined in Finding #7—but demonstrated significant miscoding of contracts as PBSA’s when in fact more than half of the contracts originally coded in FPDS as PBSA were deemed to not be PBSA by either the agency or the Panel in its review.

Types of services procured through PBSA methods

⁶ Data drawn from the FPDS database. Actions reported individually by agency on SF279.

⁷ AAP Pub. Meeting (May 17, 2005) Tr. at 45.

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At one time, PBSA was confined to basic, non-technical and support services such as security, laundry, grounds maintenance, and facility maintenance. Today, use has expanded considerably, particularly in the information technology (IT) arena. The Department of Health and Human Services website, for example, outlines a broad range of services as suitable for performance-based contracting methodologies:⁸

U.S. Department of Health and Human Services – Services Suitable for PBSA		
Facility support services e.g., security, laundry, grounds maintenance, facility maintenance, equipment repair, other than IT		
Administrative and clerical support, e.g., data entry, court reporting, typing, editing, distribution		
Aircraft maintenance and test range support		Transportation, travel and relocation services
Logistics/conference support	Medical services	Research and Development
Research support services	Telephone call center operations	Training
Environmental remediation	Technical assistance	Management support
IT and telecommunications services to include maintenance and support services		
Studies and analyses		Surveys

Growing experience with performance-based contracts has also helped agencies to identify services that are not well suited to PBSA. In August 2003, for example, the U.S. Department of Agriculture added to FAR and OFPP lists the following services as offering limited opportunity for PBSA:

- Hazardous Substance Cleanup;
- Education and Training Services; and
- Lease or Rental of Equipment/Facilities.⁹

Government officials anticipate continued refinement in their understanding of what services are suitable for PBSA's. In testifying before the panel, David Sutfin, Chief, GovWorks Division of the Department of Interior noted, "...the proper application of performance based contracting is an area where I think we're all weak, and we need help. Not every service contract lends itself to a performance based contract, and there is, I think, a rush now to use this contracting technique without fully understanding when it works and when it doesn't work: what are the risks inherent in using performance based contracting and what are the advantages?"¹⁰

⁸ KNOWnet, the Acquisition SuperSite,

<http://www.knownet.hhs.gov/acquisition/performdr/LAI/UnitOne/program.htm>

⁹ Memorandum from _____ to _____, *USDA Transports & Logistics*, (Aug. 19, 2003).

¹⁰ AAP Pub. Meeting (June 14, 2005) Tr. at 327

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Training and Support on PBSA Implementation

Since the 1991 OMB policy endorsing PBSA and the creation of PBSA targets in 2001, a loose knit PBSA support infrastructure has developed—albeit with widely varying levels of sophistication both across government and within agencies. Best practices have begun to appear in the form of performance-based centers of excellence (e.g. the U.S. Coast Guard), and the institutionalization of highly developed, team-oriented PBSA processes (e.g. the U.S. Air Force). In addition, training and support resources available to performance-based acquisition practitioners have also grown in number and accessibility.

OFPP's official PBSA guide, '*Seven Steps to Performance-Based Service Acquisition*' provides an organized methodology, breaking the PBSA acquisition process down into a logical sequence. OFPP's Seven Step support website¹¹ features an ever-growing body

of information, including detailed discussions of each of the seven steps, sample materials, best practice examples, links to relevant articles and agency guidelines, and an 'Ask the Expert' link. The ACE for Services website maintained by OMB also provides PBSA support. A significant virtual community has developed in recent years providing guidance and technical support to both agencies and private contractors seeking to take advantage of PBSA.

Seven Steps to Performance-based service acquisition

1. Establish an integrated solutions team
2. Describe the problem that needs solving
3. Examine private sector and public sector solutions
4. Develop a performance work statement (PWS) or statement of objectives (SOO)
5. Decide how to measure and manage performance
6. Select the right contractor
7. Manage performance

The Defense Acquisition University continues to deploy courses in areas important to PBSA, from general introductory classes to detailed case studies of PWS/SOO challenges in a 'mission-focused' contracting environment. An upcoming class will focus on planning, executing and assessing mission-focused service acquisitions in a team-oriented environment.

A number of private sector firms offer in-depth PBSA workshops. These firms offer training in PBSA methods to both government staff as well as private entities seeking to successfully engage with the government in a performance-based environment.

While current training and support resources are not insignificant, those who testified before the panel unanimously expressed support for more training – particularly cross-functional training where acquisition teams are expanded to include not only the contracting staff, but senior management, program management, the user community, quality assurance teams, and subject matter experts. For example, Barbara Kinosky from Centre Consulting pointed out to the Panel during her testimony, "When individuals without the proper training and experience attempt to implement a performance-based contract, the results are understandably and expectedly poor. The issue here is not that performance-based contracting doesn't work or is

¹¹ See http://www.acquisition.gov/comp/seven_steps/home.html. Additional information on the *Seven Steps to Performance-Based Contracting* is provided in Appendix One of this document.

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flawed as a concept, but rather there is trouble consistently implementing it by an inconsistently trained workforce.”¹²

Studies on PBSA Implementation

The panel sought out and reviewed reports and studies of PBSA implementation, with the goal of assessing implementation status and any data on benefits from the use of PBSA.

In a May 1998 study entitled *A Report on the Performance-Based Service Contracting Pilot Project*, OFPP cited specific cost and program gains. OFPP reviewed 26 different contracts from 15 agencies with a combined award value of \$585 million. The contracts ranged in value from \$100,000 to \$325 million. On average, as a result of the shift to PBC, contract price decreased by 15 percent. In addition, customer satisfaction improved over 18 percent, from 3.3 to 3.9 on a scale of 1 to 5. The report cited other benefits as well. For example, the number of offers increased from 5.3 to 7.3 when PBC was introduced and the total number of contract audits decreased 93 percent.

It is important to note, however, that the OFPP study found the average total procurement lead time increased by 38 days, from 237 to 275. Since agencies had significant leeway in identifying which contracts to include, the study cannot be considered definitive. However, it is the best systematic evaluation of this issue available. Unfortunately there is no more recent analysis that attempts to examine and document this type of information from a cross agency perspective. And other reviews have called into question the likely savings purported to be achieved through PBSA.

In September 2002, the GAO released a study of a small sample of contracts that were identified by the agencies involved as performance-based service contracts. Notwithstanding the agency identification of the contracts as embodying PBC, GAO concluded that there was a wide range in the degree to which these contracts in fact exhibited the characteristics of PBSA. For this reason, GAO concluded that the study “raise[s] concern as to whether agencies have a good understanding of performance-based contracting and how to take full advantage of it.”¹³

The GAO in its analysis reviewed 25 contracts designated as performance-based by the Department of Defense, the Department of Treasury, Department of Energy, the National Aeronautics and Space Administration (NASA) and the General Services Administration (GSA). Although most contracts exhibited at least one performance-based attribute, only nine possessed all of the required elements. Moreover, the GAO found that many of the contracts contained extremely restrictive work specifications. The problem is not as simple as agency resistance to a clear mandate. In roughly half the cases with incomplete adherence to the elements of PBSA, GAO identified a recurring pattern; the contracts entailed “unique and complex services” which

¹² AAP Pub. Meeting (July 12, 2005) Tr. at 140.

¹³ U.S. GAO, *Contract Management: Guidance Needed for Using Performance-Based Service Contracting*, GAO-02-1049, 2 (2002).

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entailed such significant “safety, cost and/or technical risks” that the agencies “*appropriately*” concluded that they needed to be more “prescriptive” as to how the work was to be done, and exercise more oversight as to methods for achievement of objectives.¹⁴

This raises questions as to both the proper definition of performance-based service acquisition, and the proper scope of contracting that is subject to the mandate to employ performance-based acquisition. And, it raises a specific question about the use of performance-based methods to the greatest extent appropriate in cases where there may be legitimate constraints on complete adherence to the performance-based model.

The GAO’s findings were echoed by a 2002 study of the U.S. Air Force Air Logistics and Product Centers experiences with PBSA conducted by the Rand Corporation.¹⁵ The review found that many service contracts do, in fact, incorporate performance-based practices currently being promoted in government. However, the study identified uncertainty over which services are suitable for purchase via PBSA, confusion with SOW/SOO semantics, and reservations about what constitutes measurable performance standards.¹⁶

Of the studies available, the most recent is a September 2005 GAO review of Performance-Based Logistics Contracting.¹⁷ In the review, GAO found that the Defense Department failed to verify that actual cost savings were achieved in fourteen out of fifteen of performance-based logistic contracts. Moreover, in the one contract where actual cost results were assessed, there proved to be no savings from employing performance-based techniques.

Testimony Taken by the Panel on PBSA Implementation

The Panel scheduled numerous witnesses on PBSA implementation throughout its public hearing process. Several issues related to the implementation of PBSA were raised in testimony, including the following:

Requirements Definition: Tim Beyland, U.S. Air Force Director, Plans and Integration, Deputy Chief of Staff, Personnel, commented in testimony to the Panel that, “...The problem with performance based services acquisition is our inability to write good requirements documents.”¹⁸ In response to questions, Director Beyland discussed his organization’s current practices for addressing the difficulty in capturing requirements: “[We] build our own acquisition team and all the people that will be affected by this services acquisition, pre-award and post-award, and we start building it. We do a lot of stuff by the internet. [We] now have several people on the team that we consider as close as we’ve got to experts on how to write

¹⁴ *Id.* at 2, 7.

¹⁵ John Ausink *et al*, *Implementing Performance-based service acquisition: Perspectives from an Air Logistics Center and a Product Center*, (The Rand Corp..2002).

¹⁶ *Id.* at 43-44.

¹⁷ U.S. GAO, *Defense Management: DOD Needs to Demonstrate That Performance-Based Logistics Contracts Are Achieving Expected Benefits*, GAO-05-966 (2005).

¹⁸ AAP Pub. Meeting (Oct. 27, 2005) Tr. at 82.

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performance based requirements documents, and sometimes, we'll just keep rewriting them and rewriting them until we think we've got them right. We post them. We have industry days. We send them out to industry and say tell us what you think."¹⁹

Market Research: Panel witness Ronne Rogin, of Acquisition Solutions, Inc. attributed the problem in part to contracting agencies' failure to conduct sufficient market research. "[B]efore they write their statement of objectives or performance work statement, they're not really going out to industry and talking to the practitioners to find out what is the market doing, where is the market going.... [O]nce agencies start to do that, first of all, that opens up the line of communications with the vendor community, which is excellent, but it also helps the agency shape their requirement so that it's not slanted towards what the agency has always done in the past or slant it in any other direction."²⁰

Performance Measurement: With regard to measuring outcomes, in the September 2005 issue of *Contract Management*, Jeffrey A. Renshaw discussed Quality Assurance Surveillance Plans, in his article "Quality Assurance versus Quality Control." The article points out that, even when attempting to complete the QASP, there can be confusion between the government's role in monitoring the contractor's performance and the need for an internal contractor quality assurance program to ensure the integrity of the contractor's processes. Mr. Renshaw's sentiments were echoed in comments made by many government and private sector individuals speaking to the panel. His insights regarding QASP confusion are also relevant to the questions of what performance measures to use, and what incentives to adopt.

The U.S. Air Force's Tim Beyland testified that it isn't just knowing how to write metrics and measures, but also having the skill sets to assess and measure them. "The contracting officer or the procurement specialist or the acquisition specialist is not your quality assurance specialist.... I can't tell you how many times I've had a quality assurance person come to me and say I do not know how to measure performance based. He says, when I had a firm requirement that said you will go out and cut the grass every Thursday, and it will be 2.5 inches tall to 3.5 inches tall, and it will be nicely trimmed and there will be no clippings left, I could go out and measure that. When you tell me to go out and measure whether the grass looks nice, I don't know what to do.There is a big gap between the acquisition community and the people who use these services."²¹

Contract Monitoring and Management: Panel witness Linda Dearing, Chief of General Contracts Division for the U.S. Coast Guard, agreed that there is a disconnect between pre- and post-award activities. "With the workload that we have right now, with all the requirements that we have, the focus is primarily on the pre-award and so that always takes

¹⁹ *Id.* at 108.

²⁰ AAP Pub. Meeting (July 12, 2005) Tr. at 137.

²¹ AAP Pub. Meeting (Oct. 27, 2005) Tr. at 78.

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precedence over getting the money obligated versus the performance side of it. It's always a challenge."²²

Another performance monitoring issue Chief Dearing highlighted is the lack of funding to support incentives for contractors delivering exceptional performance. Lack of funding can lead to a reliance on disincentives and penalties, with little or no financial recognition for reaching desired outcomes. During her testimony, Chief Dearing pointed out that a lack of funding frequently drives organizations to rely solely on penalties in a manner that is "inconsistent with what we're trying to achieve." One outcome for contractors facing disincentives, she noted, is that they increase their costs to cover the potential losses, "and it's difficult to negotiate those."²³

Selecting a Limited Set of Measures: Barbara Kinosky of Centre Consulting Group and Centre Law Group believes Federal agencies measure too many things. In testimony before the panel, Ms. Kinosky reported, "The government needs to learn not to create overly burdensome surveillance plans that will ultimately create a bureaucracy of contractors, monitoring contractors, monitoring contractors for compliance, only evaluate what is necessary to accurately measure success."²⁴

Robert Zahler, a partner at Pillsbury, Winthrop, Shaw, and Pittman told the Panel the problem of identifying the right number and level of measures is not just a problem for Federal agencies. His private sector clients also grapple with performance metrics. "People tend to measure too many things at too low a level. It serves no purpose. Our clients universally tell us – universally the suppliers meet every service level, yet my end-users say the service stinks. And the reason is because they're not measuring what the end-user sees as the relationship: the end-to-end result. To be able to measure the end-to-end result – not easy. ...But to be able to do it, you have to give the [contractor] some end-to-end responsibility."²⁵

Impact of the Agency Centers of Excellence: This does not mean that all agencies are stumbling with regard to either requirements or performance monitoring. In fact, centers of excellence exist throughout government. The United States Coast Guard, for example, has established a Customer Advocacy and Assistance Team to assist other Coast Guard contracting offices in crafting PWS/SOOs. This centralized office sustains a high degree of expertise and, according to Brian Jones, the team's Chief, has created more than 400 performance work statements. While the Coast Guard has not tracked the organization's impact on overall effectiveness or efficiency, they do conduct customer satisfaction and employee satisfaction surveys. The surveys report strong satisfaction, Mr. Jones reports, "They've been pretty

²² AAP Pub. Meeting (July 12, 2005) Tr. at 197.

²³ *Id.* at 153-54.

²⁴ *Id.* at 144.

²⁵ AAP Pub. Meeting (Apr. 19, 2005) Tr. at 25..

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consistently in the eighties. That's an indicator that our programs are much happier with the job that contracting is doing in getting them what they require."²⁶

Another example is found at NASA. As early as the fall of 2000, an internal review assessing PBSA implementation reported that, "all NASA centers were found to have the ability to clearly articulate performance requirements, and have made great improvements in developing performance standards. Clear linkages between contractor performance, NASA surveillance, and contractor awards were also observed in multiple contracts."²⁷ The team also noted that best practices in PBSA were observed at every NASA center.

Cultural Change and Resistance: At the same time, the NASA report raises the issue of cultural impediments to PBSA implementation, including an uncertainty as to how risk is managed in a performance-based environment. This was evidenced by reluctance throughout the organization to adopt PBSA and a hesitance to abandon models where NASA maintains a significant amount of management control over contractor activities and personnel.

Cultural impediments were reported by multiple sources. In some cases it appears to be a result of internal pressures to quickly achieve contract award combined with the expectation that PBSAs will take longer and require more resources than other contracts. Written testimony received by the Panel from a multi-association industry group acknowledged this struggle. "While culture encourages the "Get to Award" mentality, the process is also constrained by time and people resources to do the upfront work. To lead a cultural change, senior leadership needs to support the efforts and show commitment by providing additional staffing and scheduling time in procurement planning for market research."²⁸

Linda Dearing testified regarding the importance the Coast Guard's strong top-down management direction to its success with performance-based initiatives. "Until that was actually directed by our top management, it wasn't going to happen. There was resistance by the contracting officer and there was resistance by the program people because they didn't want to relinquish control of the work statement, even though someone was going to write it for them and the [contracting officer] was somewhat threatened by it. Not to mention the contracting staff had to give up billets to support the technical writers, and there was still some resistance there for that."²⁹

Witnesses reported a disconnect among the functional organizations of the larger acquisition workforce. Ronnie Rogan discussed her experience in classrooms: "I've taught many classes where it's all contracting people and they say, oh man, we'd love to do this, but our program people will never go for it. Now I teach a class of all program people and they say,

²⁶ AAP Pub. Meeting (July 12, 2005) Tr. at 203-06..

²⁷ Office of Procurement, NASA Headquarters, *NASA-wide Performance Based Contracting (PBC) Assessment: Final Report* (2002).

²⁸ Test. of Multi-Association, AAP Pub. Meeting (Jan. 31, 2006) Tr. at 4..

²⁹ AAP Pub. Meeting (July 12, 2005).Tr. at 152.

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well, this sounds fabulous, but my contracting officer will never do this. Then thirdly, boy, great ideas, but our general counsel will never let this happen. We need to get those people together in a room and make sure everybody's on the same page. Until that happens, we're not going to see a lot of changes."³⁰

Private sector experience and transformational change

The Panel received compelling testimony on current contracting practices in the private sector, where PBSA is being used to achieve transformational business process change. Private sector practitioners chiefly discussed functional outsourcing (e.g. an entire corporate Human Resources function). Several witnesses emphasized the importance of an organization identifying and understanding its high-level strategic objectives. Those objectives support the definition of program outcomes. Witnesses stressed that, in order to be successful in achieving strategic goals, entities must let go of current and past practices to make room for fundamental change.

Mr Robert Zahler, testified that, "Too much time is spent focusing on the inputs to these processes, and not enough time on the outputs: what do you want from the result? ...Classic RFPs in my industry – and I think probably in the Federal side, also – spend enormously too much time documenting historical facts: what did we do, how did we do it, what did it cost. They have some high-level stuff of maybe what they want in the future, but all too little of that. Rather, the RFP should say, "Here are my objectives. Here are my requirements. Here's how I want to interrelate with you. Come back and give me a solution."³¹

Mr. Michael Bridges, an attorney with General Motors (GM), said they even go as far as trying to keep current practitioners out of the procurement process. The purpose is two fold: 1) to give competitors freedom to suggest a broad range of end-to-end solutions and, 2) to ensure the selected supplier has authority in the day-to-day management of new systems and processes. "We have attempted to avoid the *how* of contracting. Very much back to our model: we are not the experts. We expect the integrators who come into GM and want to bid on major services projects to bring that expertise. You know, with the 2,000 egos ... we try to keep them out of that process and let our suppliers provide that expertise. So to the point that was made a moment ago, the *how* is left to the suppliers as much as possible, and we feel that the best way to do that is to stay out of the day-to-day management. Bid at a high level in terms of high level, firm fixed price requirements and turn the suppliers loose to deliver the value that they feel they need to deliver to get that done and innovate to add to margin."³²

Todd Furniss, Chief Operating Officer of the Everest Group, also emphasized the need to move beyond current practices. "So you can see that if you're focused on the myopic, you can actually do something quite counterproductive to corporate objectives. In fact, one of the terms

³⁰ *Id.* at 178.

³¹ AAP Pub. Meeting (Apr. 19, 2005) Tr. at 28..

³² AAP Pub. Meeting (Aug. 15, 2005) Tr. at 158. .

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that's frequently used...is your mess for less, okay? You're not focused on changing much; you're just talking about doing it less expensively.”³³ The opposite of which, he explains, is transformational change. Instead of duplicating functions previously performed by corporate resources, suppliers focus on “changing more and offering more feature function benefit with a different set of economic alignments in the interest of driving the business forward at the organizational level.”³⁴

Commercial practitioners also emphasized the need to avoid prescriptive behaviors on the part of both buyers and suppliers that could limit the opportunity to achieve value. Todd Furniss noted that in his firm’s experience, “...we do find that all buyers and all suppliers are, in fact, different. Now, if all buyers and all suppliers are different, then, it begs the question why, in fact, would you have a standard approach to a buyer's problem, and second, why would you dictate the solution to the suppliers who are bidding on it? Inevitably, someone is going to have to do something unnatural. And it seems to follow to us to be something that is decidedly overlooked in the procurement process generally across the industry. So what that means is there necessarily may be a number of optimal, quote, optimal solutions for a particular problem.”³⁵

C. PBSA Regulatory Guidance and Recent Efforts to Improve the FAR’s PBSA Provisions

Reflecting many of the implementation challenges described in Section C, in July 2003 an Interagency Task Force on Performance-Based Service Acquisition established by OFPP issued a report designed to make recommendations for amendments to the FAR to address observed problems in implementing the mandate for performance-based service acquisition.³⁶

The following table summarizes the recommendations developed by the Interagency Group and highlights their status while the narrative below addresses the proposed FAR changes in further detail.

³³ AAP Pub. Meeting (Mar. 30, 2005) Tr. at 132..

³⁴ *Id.*

³⁵ Test. of Todd Furniss, Everest Group, AAP Pub. Meeting (DATE) Tr. at ____.

³⁶ Interagency Task Force on Performance-Based Service Acquisition, OFPP, *Performance-Based Service Acquisition: Contracting for the Future* (2003).

Status of OFPP Implementation Recommendations

Recommendation	Implementation Status
1. Modify the FAR Part 2 to include definitions for: 1) performance work statement, 2) quality assurance surveillance plan, 3) statement of objectives, and 4) statement of work to support changes to Part 37. Modify FAR Parts 11 and 37 to broaden the scope of PBSA and give agencies more flexibility in applying PBSA to contracts and orders of varying complexity.	Partially Addressed in February 2, 2006 Final Rule
2. Modify the list of eligible service codes for PBSA, as articulated in the Federal Procurement Data System (FPDS) or FPDS B Next Generation (FPDS-NG) manual, to more accurately reflect services to which PBSA can be applied.	Implemented by OFPP Memorandum of 9/7/04 entitled "Increasing the Use of Performance-Based Acquisition."
3. Revise FPDS instructions to ensure agencies code contracts and orders as PBSA if more than 50 percent of the requirement is performance based, as opposed to the current 80 percent requirement.	Implemented by OFPP Memorandum of 9/7/04 entitled "Increasing the Use of Performance-Based Acquisition."
4. Allow agencies that do not input data to FPDS to submit supplemental reports in order to accurately reflect their progress toward meeting goals.	Implemented by OFPP Memorandum of 9/7/04 entitled "Increasing the Use of Performance-Based Acquisition."
5. Consider allowing agencies to establish interim goals but expect agencies to apply PBSA to 50 percent of their eligible service contracts (see recommendation 2 above) by 2005, in line with DOD policy.	Original target of 50% changed to 40% by OFPP Memorandum of 9/7/04 entitled "Increasing the Use of Performance-Based Acquisition."
6. OFPP should rescind its 1998 Best Practices Guide and consider developing web-based guidance to assist agencies in implementing PBSA. This guidance should be kept current and should include practical information, such as samples and templates that agencies would find useful. The website should include "The Seven-Steps to Performance-Based Service Acquisition Guide" and may include elements of existing guidance. The working group will explore the development of a web-based PBSA site for guidance, samples, and templates.	Implemented by OFPP Memorandum of 9/7/04 entitled "Increasing the Use of Performance-Based Acquisition."

On July 21, 2004, the Civilian and Defense FAR Councils proposed amendments to the FAR to implement many, but not all of the Interagency Task Force recommendations.³⁷ The general thrust of the proposed FAR amendments was to give federal agencies more flexibility so as to encourage its consistent use where appropriate.

³⁷ 69 Fed. Reg. 43712 (July 21, 2004).

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In the definitional provisions, the proposed FAR changes would recast the definition of performance-based contracting presently found in FAR 2.101 to a definition of performance-based acquisition.

The Federal Acquisition Regulation includes a general definition of performance-based contracting (FAR 2.101), a conditional mandate for use of performance-based contracting (FAR 37.102), and more concrete guidance as to the mechanics of performance-based acquisition (FAR 37.601). As published in the January 3, 2006 edition of the Federal Register, FAR 37.6 was revised to reflect a Final Rule prescribing policies and procedures for acquiring services using performance-based acquisition methods. This new rule went into effect on February 2, 2006.

FAR 2.101 defines the category of performance-based acquisition as follows:

"'Performance-based acquisition (PBA)' means an acquisition structured around the results to be achieved as opposed to the manner by which the work is to be performed."

The final rule implementing FAR 37.602 further elaborates on how PBSA is to be applied, as follows:

Agencies shall, to the maximum extent practicable— (1) Describe the work in terms of the required results rather than either "how" the work is to be accomplished or the number of hours to be provided (see 11.002(a)(2) and 11.101); (2) Enable assessment of work performance against measurable performance standards; (3) Rely on the use of measurable performance standards and financial incentives in a competitive environment to encourage competitors to develop and institute innovative and cost-effective methods of performing the work.

The definitional provisions of the FAR would also be supplemented by introducing definitions of "Performance Work Statement" (PWS) and "Statement of Objectives" (SOO) as follows:

Performance Work Statement (PWS) means a statement that identifies the agency's requirements in clear, specific and objective terms that describe technical, functional and performance characteristics.

Statement of Objectives (SOO) means a statement that identifies the agency's high-level requirements by summarizing key agency objectives, desired outcomes, or both.

- The relationship contemplated appears to be that the Performance Work Statement is considered to be the more detailed and

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objective statement of agency requirements, while the Statement of Objectives may be drawn at a higher level of generality. The major distinction made in the Final rule is that if the agency drafts a statement of objectives then the contractor will prepare the performance work statement to respond to the agency request. The Final Rule also makes it clear that the SOO does not become part of the contract.

- As defined, the Statement of Objectives does not insist on complete specification in objective terms of the results desired from contract performance.

Although the Interagency Task Force had recommended an amendment to FAR 37.102 to add term type contracts to the list of exclusions from the mandate for use of performance-based contracting techniques where practicable, that recommendation did not appear in the proposed FAR revisions nor in the Final Rule.³⁸

The proposal to amend the FAR provisions applicable to performance-based service acquisition also addressed performance standards and quality assurance surveillance plans. The proposed revisions would have provided the following:

(2) Measurable performance standards. These standards may be objective (e.g., response time) or subjective (e.g., customer satisfaction), but shall reflect the level of service required by the Government to meet mission objectives. Standards shall enable assessment of contractor performance to determine whether performance objectives and/or desired outcomes are being met.

(d) PBSA contracts or orders may include performance incentives to promote contractor achievement of the desired outcomes and/or performance objectives articulated in the contract or order. Performance incentives may be of any type, including positive, negative, monetary, or non-monetary. Performance incentives, if used, shall correspond to the performance standards set forth in the contract or order.

The provisions in the final rule however failed to provide the same level of detail as that offered above. The February 2, 2006 provisions read as follows:

37.603 Performance standards. (a) Performance standards establish the performance level required by the Government to meet the contract requirements. The standards shall be measurable

³⁸ Compare 69 Fed. Reg. at 43712, with Interagency Task Force on Performance-Based Service Acquisition at 3.

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and structured to permit an assessment of the contractor's performance. (b) When offerors propose performance standards in response to a SOO, agencies shall evaluate the proposed standards to determine if they meet agency needs.³⁹

One additional feature of the proposed FAR revisions that should be mentioned here is the proposed revisions to FAR 37.602-2, governing quality assurance. The proposed language would:

- First, make clear the commonsense proposition that the level of quality assurance surveillance should be appropriate to the dollar value risk and complexity of the particular acquisition.
- Second, the proposed language would expressly introduce the philosophy of adherence to commercial practices, which would have to be followed, "to the maximum extent practicable" in framing quality assurance mechanisms
- Third, the proposal would make explicit that, in the case of some simplified acquisitions, no special quality assurance surveillance plan, beyond that inherent in the inspection provisions of the contract, is required.

The final rule basically deletes all of these provisions, referring only to the general provisions of FAR Subpart 46.4 as follows:

37.604 Quality assurance surveillance plans. Requirements for quality assurance and quality assurance surveillance plans are in Subpart 46.4. The Government may either prepare the quality assurance surveillance plan or require the offerors to submit a proposed quality assurance surveillance plan for the Government's consideration in development of the Government's plan.⁴⁰

Finally, the proposed language of FAR 37.601 appears to make clear that the use of incentive payment provisions, whether positive or negative, is a discretionary, rather than a mandatory element of PBSA and this approach was adopted in the final rule. As such, this offers a significant degree of clarification of the existing language of the FAR.

Appendix Two provides both the basic provisions on how PBSA is to be applied as well as a comparison between the new language and the previously existing FAR Language.

³⁹ [INSERT CITE]

⁴⁰ [INSERT CITE]

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Most recently, in a July 21, 2006 memorandum to Chief Acquisition Officers and Senior Procurement Executives, Associate OFPP Administrator Robert A. Burton updated agencies on actions being taken regarding performance-based acquisitions and requested that agencies submit a performance-based acquisition plan back to OFPP by October 1, 2006. This plan should “describe the agency’s current and future PBA activities that will result in an annual increase in the number of PBA’s.”⁴¹

II. Statement of the Issue and Findings: Why has Performance based Services Acquisition not been Fully Implemented in the Federal Government?

The Panel has selected this question as its overall statement of issue. From prior reviews of PBSA’s implementation as well as testimony taken by the Panel, it is clear that implementation challenges hamper the full and effective implementation of PBSA and the complete realization of PBSA’s benefits to the taxpayer.

In April 2003, GAO reported, “According to our reviews, agencies may have missed opportunities to take advantage of the benefits offered by...performance based service contracting, because of inadequate guidance and training, a weak internal control environment, limited performance measures, and data that agencies can use to make informed decisions.”⁴² The more recent September 2005 GAO report on performance-based logistics raises additional questions about the savings potential associated with this contracting technique. It is the Panel’s general impression that little has changed since GAO published its 2003 report.

As described earlier in this report, there are various suppositions as to why PBSA has not been fully implemented. For instance, some suggest that the requirement is ill-conceived. Others have suggested that there has been a lack of commitment to implementing the requirement in the agencies. Still others suggest the problem is a lack of training and resources on when and how appropriately to use PBSA. In scheduling testimony and analyzing evidence the panel has looked at this issue bearing in mind each of these perspectives.

The following sections describe in detail the Panel’s findings on these and other factors that continue to hamper effective implementation of PBC acquisition techniques.

Finding 1: Despite OMB Target, Agencies Remain Unsure When to Use PBSA

As noted above, the FAR requires that agencies use PBSA “to the maximum extent practicable” with the exception of certain contracts dealing with architect and engineer services, construction, utility services, services incidental to supply purchases and then some additional

⁴¹ Burton Mem. at ____

⁴² U.S. GAO, *Federal Procurement: Spending and Workforce Trends*, GAO-03-443, 3 (2003). “According to our reviews, agencies may have missed opportunities to take advantage of the benefits offered by **these methods and other contracting approaches, such as** performance based service contracting, because of inadequate guidance and training, a weak internal control environment, limited performance measures, and data that agencies can use to make informed decisions.” *Id.*

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services identified by OFPP. While initially the focus was on relatively low level support services with straightforward metrics, PBSA techniques today are applied to a wide variety of contracts including professional support and information technology services. IT services in particular constitute a large portion of the federal government's services funding today and require sophisticated measures to account for contractor success in achieving agency business outcomes. The HHS website described above gives a sample of the breadth of coverage.

In spite of both the breadth of service offerings eligible to use performance-based techniques and OMB's requirement to pursue the approach, the Panel has heard from a number of commenters that there remains uncertainty on when and how to use performance-based contracting methods to acquire services. Ronne Rogin, points out that there is an issue in determining where performance-based contracting has the best fit. She states that in spite of the regulatory definition, not everyone understands the best application of it. Her comments are very similar to those cited earlier in various Government Accountability Office reports.

The Panel heard similar issues raised by government staff of various agencies attempting to put performance-based contracts in place as well as from various industry associations citing the same complaint. The Multi-Association Task Force's testimony to the panel noted that "agencies do not seem to understand how to define requirements, write SOW/SOO's, identify meaningful quality baselines and measures, identify effective incentives, and manage the contract and outcomes post-award."⁴³ The Procurement Round Table (PRT) in its Position Paper, "A Proposal for a New Approach to Performance-based service acquisition" raises a similar concern about the practicality of employing "clear, specific, objective and measurable terms "when future needs are not fully known or understood, requirements and priorities are expected to change during performance and the circumstances and conditions of performance are not reliably foreseeable."⁴⁴ The PRT proposes to limit PBSA usage to "common, routine, and relatively simple services."⁴⁵ They propose a quality based selection process similar to that followed by the Brooks Architecture and Engineer Act for acquiring "long-term and complex" services.⁴⁶

As noted above, the Final Rule on Performance-Based Acquisition published in the January 3, 2006 Federal Register and effective on February 2, 2006 makes a number of improvements to both the definition and to the implementation of PBSA to address some of these concerns. For example, the new rule stresses that the technique is not only a contracting effort, but also an agency management approach that requires the assistance of program officials as well as contracting staff for successful implementation. In that regard, the rule adopts the name "Performance-Based Acquisition," eliminating the word "Contracting" to buttress that point. In addition, it makes it clear that task orders as well as contracts may be performance-based and

⁴³ Multi-Ass'n Test. at ____.

⁴⁴ Procurement Round Table, *A Proposal for a New Approach to Performance-based service acquisition* ____ (DATE).

⁴⁵ *Id.* at ____.

⁴⁶ *Id.* at ____.

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suggests the use of either a Performance Work Statement (PWS) or a Statement of Objectives (SOO) approach for implementation. Under a SOO, the government identifies the performance objectives while the contractor rather than the government develops the PWS for government review and acceptance.

However, based on our findings and testimony, considerably more guidance is needed to assist agencies in determining when and how to apply PBSA techniques than is provided in the new rule. In July 2003 an Interagency Task Force on Performance-based service acquisition established by OFPP recommended a number of modifications to the FAR to address problems they observed in implementing this acquisition approach. They stressed one area in particular that the Panel believes requires further treatment than that offered in the new rule. Providing agencies more insight as to when to apply PBSA techniques and offering agencies more flexibility on usage would directly address the criticism that a one size fits all approach is not appropriate for this acquisition technique.

The GAO in particular in a number of its reviews has questioned both the capability of federal staff to effectively use PBSA techniques as well as the appropriateness of applying PBSA to some of the contracts they reviewed. The panel has heard a number of commenters who have similarly expressed reservations about the use of PBSA techniques. There is a lack of a systematic, rigorous effort by the government to document both how PBSA techniques are being used across the federal government as well as the benefits to be achieved through their use. While there are many indicators that suggest that real gains can be achieved in focusing on performance and business outcomes, better information on these results would certainly add more credibility to the strong management focus on PBSA.

Along these lines, the panel finds that current PBSA targets (40 percent of all services acquisitions must be performance-based, as noted previously) fail to acknowledge that performance-based contracting is not suitable for all service acquisitions. An unintended outcome of applying these targets may be that the number of PBSA designations increase when an agency is behind on targets (with little regard to the type of service being procured, or the applicability of performance-based techniques). While the panel recognizes that targets have value, they should be tailored to avoid unintended effects. The following table offers one way to address the question of how best to tailor PBSA methods to meet differing agency needs.

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Degree of PBSA Implementation Difficulty by Contract Type

Type of Service	Current Contract Type	PBSA Implementation Difficulty Low/Moderate/High	Specific Challenges
Basic logistical and support services	Firm fixed price	Low	➤ None.
	CPIF of CPAF	Low	➤ None.
	CPFF or Time and Materials	Moderate	<ul style="list-style-type: none"> ➤ Overcoming reliance on buying hours in favor of developing performance standards. ➤ Linking performance to meaningful incentives/disincentives.
	Indefinite Quantity Contract (IQC)	Moderate	<ul style="list-style-type: none"> ➤ Developing relevant performance standards in advance of specific requirements.
Complex professional and technical services	Firm fixed price	Moderate	<ul style="list-style-type: none"> ➤ Establishing outcomes and performance standards attributable to the contractor's efforts.
	CPIF of CPAF	Moderate	<ul style="list-style-type: none"> ➤ Establishing outcomes and performance standards attributable to the contractor's efforts.
	CPFF or Time and Materials	High	<ul style="list-style-type: none"> ➤ Establishing outcomes and performance standards attributable to the contractor's efforts. ➤ Overcoming reliance on buying hours in favor of developing performance standards. ➤ Linking performance to meaningful incentives/disincentives.
	IQC	High	<ul style="list-style-type: none"> ➤ Establishing outcomes and performance standards attributable to the contractor's efforts. ➤ Developing relevant performance standards in advance of specific requirements.

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Finding 2: PBSA Solicitations and Contracts Continue to Focus on Activities and Processes, Rather than Performance and Results

By definition, Performance-based contracting should focus on results achieved, and not the effort or activities undertaken to deliver those results. Unfortunately, as noted previously the GAO's PBSA report⁴⁷ found that contracts billed as PBSAs tend to add a veneer of "performance measures" on top of lengthy, detailed statements of work.

There are three major drivers behind the focus on activity rather than performance in current PBSA contracts: 1) poor "needs" definition by government in acquisitions; 2) cultural preference in federal acquisition to dictate work activity; and 3) a difficulty with developing performance measures.

First, the federal government has done a poor job in defining its "needs" in clear and results-oriented terms in its solicitations. Clearly defining government's needs up front is not something the procurement community can do alone – program and financial elements within the government must also participate and contribute to clearly define outcomes of an acquisition. Creating high-level business objectives demands multiple stakeholder involvement and a joint and strategic understanding of where the agency wants to be, as well as where industry and technology are going. Agency users at all levels (procurement, administration, financial programs, audit) need to be educated to understand how PBSAs work and what they can and cannot do.

Second, from a cultural perspective, it has proved very difficult for agencies (not just procurement organizations but their client organizations as well) to let go of simpler traditional ways of writing contract specifications – telling vendors exactly what to do. Even when performance goals are used, detailed requirements can still slip in – if not in the PWS/SOO during the pre-award phase, then in performance measurement during contract performance. The buyer must be willing release control over the vendor's day-to-day performance. To successfully manage an organization into an objective-driven performance approach requires a daunting cultural shift away from business as usual.

In some cases, a "risk adverse" culture limits the level of results-oriented focus in a PBSA contract. In roughly half the cases in which GAO found incomplete adherence to the elements of PBSA, GAO identified a recurring pattern: the contracts entailed "unique and complex services" which entailed such significant "safety, cost and/or technical risks" that the agencies "*appropriately*" concluded that they needed to be more "prescriptive" as to how the work was to be done, and exercise more oversight as to methods for achievement of objectives.⁴⁸

Third, determining clear, results-oriented performance measures to include in contracts is also a challenge. Some contracts contain performance measures focused on activities and work

⁴⁷ GAO-02-1049.

⁴⁸ *Id.* at 2, 7.

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processes, rather than results or impact to the agency from the work performed. In other cases, contracts have too many performance measures attached to them—imposing a significant data collection and reporting burden.

In his testimony to the Panel, Brian Jones of the United States Coast Guard discussed his experience with developing measures, “People have a hard time doing that. I’ve been working in measurement and analysis for 15 years and the thing I find is people will sit there and they’ll try to measure everything. They’ll come up with 25 measures, which is, I think, is the wrong approach. We take a very simple approach, as few measures as possible, the ones that are really critical to your success.”

Finding 3: PBSA’s Potential for Generating Transformational Solutions to Agency Challenges Remains Largely Untapped

While in theory PBSA offers great potential for allowing for transformational solutions to the federal government’s needs, current implementation of PBSA has not fully delivered on this promised benefit. This is largely driven by the focus on activities and work processes outlined in Finding #2. However, it is also grounded in a lack of market research and understanding by government of what innovative solutions are available to their needs.

The Panel notes that enhanced examination of public- and private-sector solutions is part of the PBSA “Seven Steps” implementation approach. PBSA has resulted in increased market research in federal acquisitions. Witnesses before the Panel reinforced this point.⁴⁹

Todd Furniss of the Everest Group illustrated with a graphic, the consequences of focusing on existing work processes rather than clearly defining agency’s needs/performance outcomes. In discussing the graphic below, Furniss noted: “So you can see that if you’re focused on the myopic, you can actually do something quite counterproductive to corporate objectives. In fact, one of the terms that’s frequently used in... the lower left [red square] is your mess for less. Here you’re not focused on changing much; you’re just talking about doing it less expensively. And the term that tends to be used in the upper right hand corner [green square] tends to be transformational in nature, meaning that the suppliers are focused on changing more and offering more feature function benefit with a different set of economic alignments in the interest of driving the business forward at the organizational level.”⁵⁰

⁴⁹ “[O]ne thing that agencies are not doing well is market research, as intended in FAR Part 10. ...[B]efore they write their statement of objectives or performance work statement, they’re not really going out to industry and talking to the practitioners to find out what is the market doing, where is the market going, where is the technology going, if you were us, how would you do that, that just very basic question. [O]nce agencies start to do that, first of all, that opens up the line of communications with the vendor community, which is excellent, but it also helps the agency shape their requirement so that it’s not slanted towards what the agency has always done in the past or slant it in any other direction.”

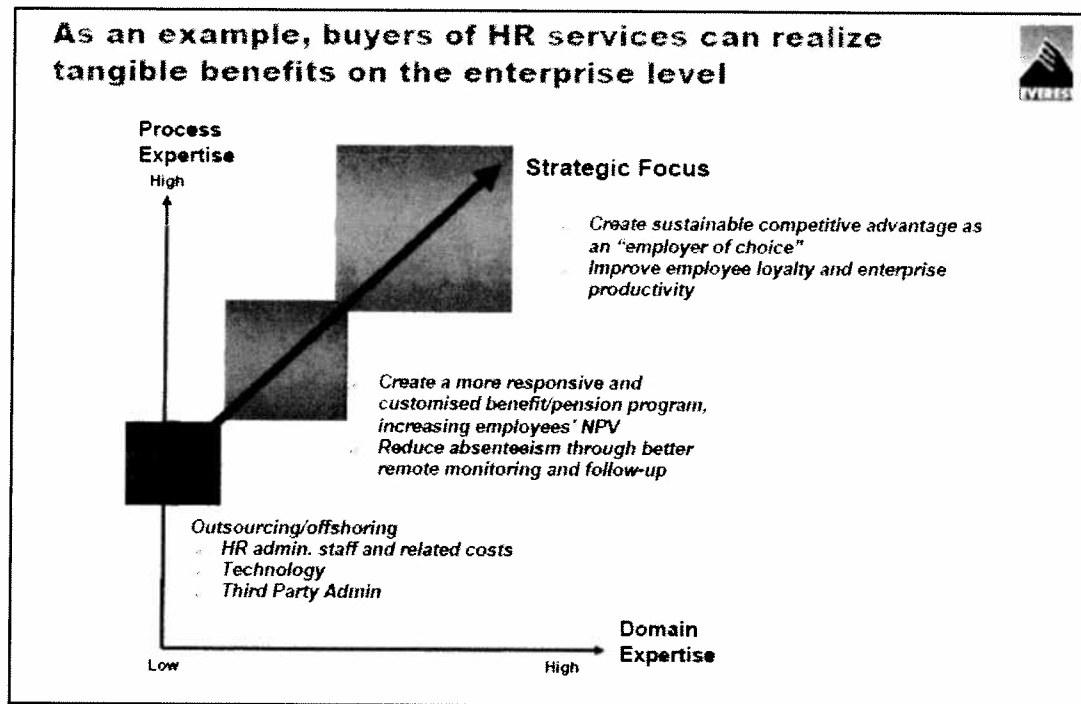
Rogin Test. at 137.

⁵⁰ Furniss Test. at 132.

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The Panel is concerned that there may be a tendency of contractors to not be open to a broader set of responses outside the government's original statement of work. Contractors are fearful of losing the bid if they do not mimic the statement of work closely in their responses. As a result, many competitions are reduced to careful alignment of proposals with the government's specific approach and/or price shoot-outs, and the potential for innovation is largely forfeited.

The Panel concedes that defining a strategic vision and compelling an institution to coalesce around it are extremely difficult endeavors. Stove-piped organizations, and institutional and cultural conservatism greatly inhibit the ability to define and execute against strategic objectives. The right people must be involved, including senior leadership and vital stakeholders, to bring a broad perspective on what to buy, as well as which vehicle to use. If the critical parties are not at the table, it is extremely difficult to break through cultural barriers that inhibit success.

Finding 4: Within Federal Acquisition Functions, There Still Exists a Cultural Emphasis on "Getting to Award."

Many witnesses reinforced the notion that PBSA is a process that requires a significant preliminary effort to clarify agency needs, engage in innovative solutions development, and craft the right measures and incentives. This increased up-front investment of time, training and resources flies in contrast to the traditional culture of most acquisition shops under significant pressure from internal clients to get contracts awarded quickly. Client demand is exacerbated by

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an under-resourcing in today's Federal acquisition workforce. In many organizations, the personnel and skill sets required to undertake the up-front research and planning simply do not exist. Chip Mather, from Acquisition Solutions met with the PBC working group. In our discussion, Mr. Mather expressed his experience that the focus of most federal contracting shops is on "getting to award, over the process of due diligence."

The upfront investments required to produce a successful PBSA make it an impractical technique for certain contracts. For example, a lengthy RFI-RFP process is not suitable for a contract with a duration of only twenty-four months. A certain degree of flexibility is required for Federal program and acquisition teams to determine whether PBSA is appropriate.

Finding 5: Post-Award Contract Performance Monitoring and Management Needs to Be Improved

Performance-based contracting does not end with the award of the contract; it is an ongoing process of monitoring and managing existing contracts for improved performance. Multiple witnesses expressed concern that the government does not adequately collect performance information for individual contracts, let alone review and provide ongoing feedback and corrective action on vendor performance. Moreover, as we have seen from various GAO reviews previously cited, there is not a systematic effort to identify the real cost savings that can result from adopting performance-based procedures. It is difficult to put the time and effort into developing these kinds of acquisition approaches when the benefits can be so easily questioned.

Reviews of selected contracts conducted by the Panel have revealed that contracts asserted to be performance-based often lack one or more of the key elements included in the Federal Acquisition Guidelines for determining whether or not a contract meets the FAR requirements. This finding is very much in line with the GAO criticisms noted earlier. For example, while contracts may contain useful measures by which to assess successful performance, they often lack a Quality Assurance Surveillance Plan (QASP) that is integral to qualifying the effort as performance-based.

Furthermore, neither the metadata nor the processes exist to track lessons learned, or capture successes. As another witness noted, "there's no means to track whether we're successful in [our measuring] or whether we're getting the objectives that we're putting on paper, so we need to get better in that area."⁵¹

It is important to note that this challenge is not limited to the Federal contracting environment. It is also evident in the private-sector's use of performance contracting. Robert Miller from Procter and Gamble testified that "In reality, over a five to seven year term, or as people start to put a contract in place, what you sometimes find out is that the folks actually on the front line managing the interface don't often check the contract as they go through; sometimes, the deal is put on the shelf and largely forgotten, and actually, the vendors like to

⁵¹ Test. Of Linda Dearing, U.S. Coast Guard, AAP Pub. Meeting (July 12, 2005) Tr. at 154.

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encourage this. That gives them more flexibility. Often, some of the people who are involved in managing the project were not involved in the negotiation of the transaction. They may not have a full knowledge of the contract. As events unfold, where there are departures from the agreement, sometimes, those aren't recognized by the people in the front line. Life being what it is, not everything is anticipated; even the best lawyers and people who work in the area substantively are not going to be able to anticipate everything, and so, there are going to be modifications, and sometimes, those just get executed. They're not in the agreements. There are often tools for monitoring the agreements that sometimes are not really utilized to the fullest by the people managing the arrangement."⁵²

Vernon Edwards and the late John Cibinic point out in an April 2005 report entitled "Procurement Management, A Chance to Fix Performance-Based Contracting" the difficulties in specifying the level of services that might be required from a contractor, particularly if a long term contract is at issue. It is hard to specify objectives in "clear, specific and objectively measurable terms at the outset, ex ante."⁵³ They recommend more flexibility be afforded to the project team on setting measures while continuing to hold the contractor accountable for results. Under any circumstances, it is critical that the government and the contractor be clear on the outcomes to be achieved and the means by which the government will monitor and evaluate the contractor's level of success in achieving its business objectives. As noted above there appears to be some confusion on exactly what the role of the Quality Assurance Surveillance Plan or QASP should play. It is not the contractors internal quality control system. This distinction needs to be made clear.

In addition, this confusion can lead to a failure of the government to emphasize how it will measure performance as it is developing its Statement of Objectives or Performance Work Statement. This issue comes to play both in the early stages of developing the measurement approach as well as the later requirements for the government to actually follow through on its contract management/contract administration responsibilities. A number of reviewers have commented on the intense pressures on contracting staff to focus on getting contracts out, as noted in Finding 4. If the government fails to follow through on assessing the contractor's level of success, then clearly there is little benefit from taking the extra up front time to lay out a strong performance-based contracting approach. Having adequate staff to perform the contract administration role and ensuring they are adequately trained to effectively assess performance are two measures that would seem to be important in ensuring successful results.

Finding 6: Available Data Suggest that Contract Incentives Are Still Not Aligned to Maximize Performance and Continuous Improvement

An important element of PBSA is the use of incentives, both financial and non-financial, to promote improved results both agencies and the taxpayer expect. Many PBSA vehicles rely

⁵² Test. of Robert Miller, Procter & Gamble, AAP Pub. Meeting (DATE) Tr. at ____.

⁵³ Vernon Edwards & John Cibinic, *Procurement Management, A Chance to Fix Performance-Based Contracting* (2005).

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on fixed price approaches to provide contractors incentives to improve efficiency. Nevertheless, many other avenues to provide incentives exist. In many cases, incentives are not fully aligned to encourage continuous improvement or innovation by the contractors for the government.

Barbara Kinosky of the Centre Consulting and the Federal Consulting Institute, commented to the panel, “[W]hen acquisition professionals are working from limited templates, and using only financial penalties and disincentives to enforce the quality assurance surveillance plan, then that risk is understandably going to be priced by the contractor and included in the contract price. An adequate library and resource center will enable the acquisition team to think in terms of alternative approaches, such as the exercise of an option year as an incentive, rather than just disincentives. This approach will ultimately save the government money because it reduces the risk to the contractor.”⁵⁴

Brian Jones of the United States Coast Guard testified, “[O]ne of the challenges that we face is the incentives and the disincentives, and when we get to that part of it, it’s very challenging because we don’t have any additional funding for incentives, so it ends up being, you know, putting those disincentives out there and sometimes they’re just--they are inconsistent with what it is that we’re trying to achieve. For instance, ...we just had a failure on a contract, almost a failure. We almost went into termination. It was an IT contract. It was so ridiculous. [T]here was \$500 per hour [fine for] downtime and it’s down for weeks. It just didn’t make sense.”⁵⁵

The Panel recognizes the difficulties agencies face in getting ‘extra’ money allotted to reward contractor performance. A number of agencies have used “award term” contracts as a way to deal with this issue. This innovative approach allows superior contractor performance to be rewarded through contract term extensions as opposed to extra money. As the government and vendor community gain PBSA experience, the panel anticipates other pioneering incentive methodologies will be put in to practice. Performance incentives must be simple, clearly articulated, understood by all parties, and encourage overall program success. No one benefits from reward systems that result in burdensome processes or encourage the wrong things, or worse, perverse incentives that work to save the government money by promoting contractor failure.

Initially many agencies relied basically on “deduction schedules” as ways to tie incentives – really disincentives – to contractor performance. Rather than focusing on rewarding contractors for achieving business outcomes, deduction schedules emphasize the negative consequences of failure to perform. The panel believes that positive incentives can be effectively used to promote superior results. It is important however that the project team explicitly acknowledge the business benefits to be achieved through use of the incentives. And then, if the results are obtained, the incentives should be willingly paid.

⁵⁴ Test. of Barbara Kinosky, Centre Consulting & Federal Consulting Institute, AAP Pub. Meeting (DATE) Tr. at ____.

⁵⁵ Test. of Brian Jones, U.S. Coast Guard, AAP Pub. Meeting (DATE) Tr. at ____.

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Finding 7: FPDS Data Are Insufficient and Perhaps Misleading Regarding Use and Success of PBSA

As noted previously there have been few efforts to document the use and benefits of performance-based contracting methods in a systematic fashion. The 1998 OFPP study cited earlier offers some information on PBSA benefits but that is now considerably out of date. In addition, reviews of contracts described as performance-based have raised questions about whether all performance-based elements as noted in the FAR definition were in fact being used. A number of GAO studies moreover have called into question the cost and performance benefits purportedly achieved through performance-based techniques. Clear data on both usage and effects are needed to address fully the benefits and provide agencies and OFPP a stronger basis for continuing to promote its use.

Panel-Initiated Review of Selected Federal Contracts

To further test the conclusions on usage provided by the ad hoc studies available, the Panel initiated its own review of agency PBSA contracts with a goal of making its own determination of how effectively the PBSA methodology has been applied.

Based on a Federal Procurement Data System –Next Generation (FPDS-NG) report on fiscal year 2004 transactions coded as performance-based, the Panel selected orders and contracts from the top ten contracting agencies. A total of 80 orders or contracts were selected randomly using the following general guidelines:

1. Actions reported in excess of \$20 Million, where possible
2. Actions falling generally within the service codes of management and professional or Information Technology (IT) to allow for comparisons

The Office of Federal Procurement Policy (OFPP) requested the pertinent documentation for a total of 80 orders and contracts in a memo dated March 17, 2006 to the following agencies:

- Department of Defense
- Department of Agriculture
- Department of Energy
- General Services Administration
- Health and Human Services
- Department of Homeland Security
- Department of Interior
- Department of Justice
- National Aeronautics and Space Administration
- Department of Veteran's Affairs

Due to various circumstances and mutual agreement to remove several contracts from the request, an actual total of 76 orders and contracts were requested. The Panel received and reviewed 64 of the 76 requested transactions. Nine of the 64 were missing documentation

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necessary to complete the assessment, and although the Panel staff had initiated a follow up request for information, none was received. Therefore, the following analysis is based on a total of 55 reviewed orders and contracts submitted by 10 agencies or 72% of the sample.⁵⁶ All agencies responded.

The review evaluated requirements, metrics and standards, surveillance plans, and the inclusion of any incentives. Similar to the findings in the September 2002 GAO study, the Panel-initiated review found a range in the degree to which the contracts exhibited PBSA characteristics. A total of 36%⁵⁷ of the contracts reviewed to date contain the elements of a PBSA. Another 22% required significant improvement in one or more of the elements characteristic of a PBSA.

Of the orders and contracts coded as performance-based in FPDS-NG and reviewed, 42% were clearly not performance-based. This assessment often came directly from the agency in responding to the request. One agency response noted “You may include all contracts referenced under Paragraph B and C as NOT PBSA (4 Total).” Another agency stated “Reviewed: determined not to be performance based.” And yet another agency said they had researched a particular contract finding that “It is not a PBSA contract. The 279 was erroneously coded in the FPDS-NG system at the time of initial award. I have corrected all of the 279s⁵⁸ to avoid any further misinformation.”⁵⁹

The largest weakness found, in those that required significant improvement in one or more elements of a PBSA, was in the metrics and standards. Although requirements were often stated as outcomes appropriately, some more prescriptive than others, the measures were not adequately linked to the specific outcome, and/or the quality attribute being measured was inadequate or insufficient (e.g. timeliness). Although timeliness is a valid attribute, it is insufficient as a stand alone performance measure, as any contract expectation is on-time delivery. It was clear throughout these orders and contracts that a performance-based approach was intended but the execution was lacking to some degree. The greatest success appears to be within the Information Technology (IT) Service Contracts where service level agreements (SLAs) define performance levels and objective measurements and standards.

Another repeating shortfall was in the Quality Assurance Surveillance Plan (QASP) area. There appears to be some confusion with respect to the difference between a QASP and a contractor submitted Quality Control Plan (QCP). In some cases, where a QCP was submitted by the contractor as a requirement of the contract, there was no correlating translation, QASP or otherwise, for government surveillance. It was often unclear as to how the performance data would be collected or monitored.

⁵⁶ Contracts other than requested or agreed to for substitution were not included herein.

⁵⁷ Percentages rounded.

⁵⁸ Refers to the Standard Form 279 used for reporting transactions to FPDS-NG.

⁵⁹ Information provided to Panel staff.

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Other observations include the interchangeable use of the terms Statement of Work (SOW), Statement of Objectives (SOO), and Performance Work Statement (PWS). In several instances, all three were used within the context of the contract.

There were very few instances of any quality incentive clauses. Award fee criteria appear to be the norm, with some attempt at weighted formulas. They were often tied to criteria other than that specific to the contracted service. The review did not seek to determine or make conclusions as to the actual effectiveness of incentives, only that when used, the incentives were related to the outcomes described in the requirements.

The OFPP letter included a request from the agencies for any recommendations for improving the regulations, policies, training or reporting of performance-based acquisitions. One response stated: “It would be helpful if it was emphasized that more training of technical personnel on writing, implementing, and monitoring PBSA-related requirements is needed.”⁶⁰

An additional 6 contracts above those requested were received from 4 agencies and were also reviewed, but not included in the statistics above. Five of the 6, contained PBSA characteristics, and one required improvement.

III. Recommendations: Improving Implementation of Performance-Based Acquisition in the Federal Government

Recommendation 1:

OMB’s Government-Wide Quota of Requiring 40% of Acquisitions be Performance-based Should be Adjusted to Reflect Individual Agency Assessments and Plans for Using PBSA

Initial implementation of PBSA has been driven by OMB’s establishing and enforcing a quota that 40% of major contract dollars be covered under PBSA contracts. While a government-wide quota has been helpful in jump-starting implementation of PBSA, a universal, one-size-fits-all quota should be abandoned in favor of a more strategic and pro-active approach for establishing PBSA targets.

While the Panel firmly believes in the accountability created by PBSA targets, the Panel recommends that OMB establish PBSA targets on an agency-by-agency basis. In establishing these agency-specific PBSA targets, OMB should review each agency’s analysis of its unique acquisition portfolio based on clearer OFPP PBSA guidance (see Recommendation 2) as reflected in the agency’s Acquisition Performance Plan (see Recommendation 3).

Notwithstanding this modification in how targets are set, the Panel strongly endorses the notion that OMB should continue to establish and enforce “stretch” goals for individual agency implementation of PBSA.

⁶⁰ [INSERT CITE]

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Recommendation 2:

FAR Parts 7 and 37 should be modified to include two levels of Performance-Based Acquisition: Transformational and Transactional. OFPP Should Issue More Explicit Implementation Guidance and Create a PBSA “Opportunity Assessment” Tool to Help Agencies Identify When They Should Consider Using Performance-based Acquisition Vehicles

The Panel recommends that OFPP issue clear and illustrative guidance to agencies on when to use PBSAs. This recommendation responds to agency confusion over which contracts should use PBSA techniques as well as some concerns over agencies applying PBSA to contracts where its use provides little benefit.

In issuing guidance on when to use PBSA, OFPP should address the following:

- **Define Two Categories of Performance-based service acquisition:** The Panel recommends the guidance create two categories of PBSAs, one reflecting an aggressive application of the tool and another reflecting a streamlined and targeted application of the tool. This guidance reflects the notion that not all PBSA’s are equal in terms of complexity faced and investment required to implement the model. By creating two categories, agencies can calibrate their investment in PBSA to fit the level of benefit they seek.

To reinforce the OFPP guidance, the Panel further recommends that FAR Parts 7 and 37 be formally modified to reflect these two categories.

Option 1: Transformational Performance-Based Acquisitions

Definition: Transformational Performance-Based Acquisitions typically use a Statement of Objectives approach for acquiring services. Under this model the agency identifies a baseline need/problem, but is not in a position to specify the work that will be done. In this case, the agency should establish outcomes and allow vendors to offer unique (and potentially adjust post-award) solutions proposing the specific approach to solving the baseline need/problem. The agency thus places the risk that the work being done may not solve the baseline need/problem squarely with the vendor.

Under this approach, measurable performance standards would relate to the impact of the acquisition on the agency’s need/problem, but not the work actually done by the vendor in solving the agency’s need/problem.

Option 2: Transactional Performance-Based Acquisitions

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Definition: Transactional Performance-Based Acquisitions typically use a Performance Work Statement approach for acquiring services. Under this model, the agency identifies a baseline need/problem, and has already substantially determined what work is to be done. In this case, the agency is more concerned with ensuring that work being done meets certain cost, quality or timeliness attributes. The agency is willing to assume the risk that the work being done may not solve the baseline need/problem.

Under this approach measurable performance standards would relate to the quality and attributes of the work actually done, with limited or no measurement on impact of work on agency's need/problem.

The guidance should provide explicit examples of cases where Transformational vs. Transactional PBSA models would be used, as well as examples of cases of acquisitions that would not be ripe candidates for PBSA. In compiling these examples, OFPP should depict actual agency experiences in using PBSA in different service areas. Ideally the complete implementation of Recommendation 10 will help create an evolving database of PBSA examples.

- **Provide an Agency PBSA “Opportunity Assessment” Tool:** The Panel recommends the guidance include a self-assessment tool that would include standardized questions an agency should consider when evaluating its acquisition portfolio for PBSA opportunities. Among other factors pertinent to PBSA, the self-assessment tool included in the guidance should help an agency analyze a service to determine:
 - a) whether a performance-related baseline problem exists (cost, quality, timeliness, impact to agency mission)
 - b) the level of risk associated with the service not being optimally provided (importance to mission of the service being provided optimally);
 - c) the level of confidence the agency has in its own “work statement” to solve the baseline problem;
 - d) the amount of risk the agency wants to assume for managing the service impact on its own vs. shifting to a vendor;
 - e) the readiness of the Program to measure the impact of the service on its program performance goals/mission, as well as the readiness of Program staff to participate in a PBSA process

The creation of a PBSA Opportunity Assessment Tool reflects the Panel's view that implementing this new approach to acquisition in government will take time—requiring a more prioritized and strategic approach to when to use PBSA models. By focusing on “low hanging fruit” agencies can build competency and experience in PBSA and achieve early “wins” for the taxpayer.

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In devising this guidance, OFPP should seek the input of the OFPP PBSA Inter-Agency Working Group that it has already established.

Recommendation 3:

Publish a Best Practice Guide on Development of Measurable Performance Standards for Contracts

OFPP should issue a “Best Practice Measures Guide” on the development and selection of performance measures for PBSA contracts. This recommendation is driven by testimony taken by the Panel, as well as numerous reviews of individual PBSAs, that has underscored the difficulty agencies face in devising and selecting good performance measures to include in both PBSA solicitations as well as inclusion in contract awards.

As part of OMB Circular A-11, OMB has already issued general guidance on the development of performance measures. However, this guidance relates to programmatic performance, rather than performance standards for individual contracts. The Panel believes that a Best Practice Measures Guide is critical to providing instruction and illustration in the use of measures as part of PBSA.

In developing a Best Practice Measures Guide, the following criteria should be as a minimum addressed to guide agency selection of PBSA performance measures:

- **Measurement “Chain” or “Logic Model”** Performance measures should be defined using a structured framework (such as a Value Chain or Logic Model) that define expected performance from an acquisition: starting first with the outcomes the agency seeks to achieve with the acquisition and then proceeding to demonstrate alignment between the specific outputs and/or activities conducted under a PBSA contract and those outcomes.
- **Baseline & Outcome Measure(s)**: PBSA’s should be grounded in at least one or more measures that directly assess the agency’s baseline need/problem relating to the service being acquired. Baseline measures will not only help provide a “starting point” of current performance from which vendors can analyze and propose innovative solutions, but also can be used during and after an acquisition to indicate whether a service has had the desired outcome on the agency. Common baseline measures will largely assess how an acquisition has resulted in the program being able to:
 - Achieve improved performance toward program goals, including improved service levels or impact to agency customers, and/or
 - Address a major cost management issue facing the program, resulting in cost savings or enhanced ability by the program to operate in a more economical or efficient manner.

For Transactional PBSAs, baseline measures might not be included in the final contract awarded, but would be helpful to include in a Performance Work Statement to improve the

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quality of vendor responses as well as serve to assist in agency own internal review of a contract's impact to the agency.

- **Contract Management and Monitoring Measures:** Other performance measures used in a PBSA should relate to the work actually being done by the vendor—with particular focus not on effort or activities conducted, but actual service “attributes” such as:
 - Timeliness: the services are provided in a timely manner
 - Accessibility: the service is available to users in a user-friendly manner
 - Quality: the service is provided in a manner free of flaws or errors
 - Workload levels: the quantity of services provided or clients served meets the demand
 - Economy: For contracts that are not fixed price, an agency may consider some cost-related performance measures. (For example, some agencies not using fixed price contract vehicles have measured actual costs against original cost estimates)
- **Limiting Measures:** Particularly when using contract management measures, agencies should be highly selective in the measures they use, limiting the number of core performance measures to a handful. Agencies have been tempted to measure everything to ensure everything gets done by the vendor. Instead of using this approach, agencies should “sample” measures across the spectrum of their measurement chain or logic model to create a basket of indicators that balance the need to assess service outcomes (impact on the baseline) with measures for contract management and monitoring. The Panel strongly endorses the use of sampling and “representative indices” to measure large service areas rather than measures for each service area.
- **Subjective vs. Objective Measures:** Reflecting recent revisions in the FAR, the guidance should address when and how to use subjective performance measures, including customer satisfaction scores.
- **Measurement Selection Process:** The guidance should provide helpful practices to guide the process by which measures are developed—ensuring that program and subject matter expertise are used to select measures. The guidance should also encourage agencies to survey users of the service to identify and rank core service “attributes” they expect. In addition, the guidance should encourage agencies to allow the supplier to propose the measures as part of the technical proposal in a PBSA response.
- **Evolution of Measures:** The guidance should address a process by which measures WILL and MUST change over time. There can be adjustments of expectations during performance that were not anticipated during the acquisition planning phase, as well as a need to provide for continuous improvement and refinement of the measures over time. Agencies should be explicitly encouraged to evolve their measures, provided that a justification is provided. It is

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likely that contract management and monitoring measures will evolve over time, while the baseline outcome measures will remain the same.

Recommendation 4:

Modify FAR Parts 7 and 37 to Include an Identification of the Government's Need/Requirements by Defining a "Baseline Performance Case" in the PWS or SOO. OFPP should issue guidance as to the content of Baseline Performance Cases.

The Panel received consistent testimony indicating that the private-sector considers the definition of client needs/requirements upfront in an acquisition is one of the most important aspects of PBSA. There are questions whether the federal government has been consistent in clearly defining its needs/requirements up front—a deficiency that some believe may have led to poorly executed contracts and in some cases contract failures. In addition, the importance of conducting extensive market research before proceeding with a PBSA was underscored by numerous private sector experts.

The Panel recommends that the FAR be revised to require that agencies publish a formal "Baseline Performance Case" as part of its use of a PBSA. As part of the OFPP guidance, the Baseline Performance Case would include:

- **Outcome Performance Measures:** Identifying and explaining performance measures that capture the outcome sought by an agency in a particular service area (as defined in the guidance required in Recommendation #4)
- **Baseline Performance State:** Using the outcome performance measures, the agency would assess the current level of performance in a particular service area. In addition to measuring the baseline, some qualitative description of the performance problems/needs would be provided.
- **State-of-Practice:** The agency would describe the current "state-of-practice" in the service area as determined from its market research. Stating the assumptions of the agency in this regard would allow outside bidders to identify areas of innovation that the agency might have missed in reviewing potential private and public-sector solutions to its need/requirement.
- **PBSA Approach:** Based on the analysis described above, the agency would then select and justify either the use of a Transformational PBSA or a Transactional PBSA.
- **SOO or PWS:** The agency would include the SOO or PWS as part of the "Baseline Performance Case" and solicit proposals from vendors.

The creation of a Baseline Performance Case (to include the SOO and PWS) would provide the much-needed structure and discipline to ensure that the federal government improves its definition of performance needs/requirements up front in an acquisition.

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Recommendation 5:

Improve Post-Award Contract Performance Monitoring and Management, Including Methods for Continuous Improvement and Communication through the Creation of a “Performance Improvement Plan” that would be Appropriately Tailored to the Specific Acquisition

One of the challenges of long-term complex service contracts is the fact that needs change over time and that as a result performance priorities may also need to be adjusted to reflect these changing circumstances. In addition, as some have noted, relationships play a key role in the assessment of contractor performance. Responsiveness and customer satisfaction are as important in many cases as technical achievement. Many practitioners have stressed the need for effective ongoing communications between the government and the contractor to ensure that contractor performance remains on target in meeting the mission needs of the agency.

To reflect that need for addressing shifting priorities and again to respond to Finding Five regarding the need for improved post-award contract management, the Panel recommends that contractors be required to develop and submit at pre-determined milestones a Performance Improvement Plan (PIP) that agency staff would assess and approve. This plan would serve as a means for ensuring that both the agency and the contractor are regularly communicating and assessing the need, both for continuous improvement and responsiveness to shifting priorities. The PIP should, at a minimum, do the following:

- Include reporting of required performance standards under the QASP,
- Identify gaps in performance along with an explanation for them,
- Suggest changes in work product to achieve improved performance and reflect changing circumstances, and
- Identify eligibility for contract incentives, if any.

Recommendation 6:

OFPP Should Provide Improved Guidance on Types of Incentives Appropriate for Various Contract Vehicles

As the Panel noted in Finding Six, the use of incentives remains troublesome, with confusion existing about what types of incentives are appropriate and with some expressing difficulties in being able to acquire the additional up front funding to meet these requirements. A number of agency PBSA guides including that of the Office of the Secretary of Defense address the types of incentives available and offer tips on how best to use them.

However there is no useful database for identifying the level of use of various types of incentives in PBSA efforts, nor does there exist in-depth guidance for practitioners on how best to apply them. A continuing theme of many of the witnesses who have appeared before the panel is that more guidance and more training are needed for the basic elements of PBSA to be

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effectively applied. Therefore, the Panel recommends that OFPP take the leadership initiative and use the existing PBSA inter-agency working group, if appropriate, to prepare the following:

- A catalog of the various types of incentives appropriate for use in PBSA efforts (both financial and non-financial),
- A critique of how such incentives are currently being applied in selected performance-based awards, and,
- An assessment of the applicability of award fee and award term approaches to performance based acquisitions (making it clear that while subjective, these techniques offer perfectly acceptable means for measuring performance)
- Discussion of challenges posed in managing PBSAs under existing budget and appropriation rules that limit multi-year financial commitments and incentive-based budget projections.

Recommendation 7:

OFPP Should Revise the Seven Step Process to Reflect the Panel's New PBSA Recommendations

The Panel believes that the Seven Steps Guide to Performance-Base Services Acquisition continues to offer useful templates and information for agency staff to use in developing performance-based awards. However, in light of the changes proposed above, as well as based on testimony from the private-sector witnesses on their use of PBSA models, the Panel recommends that the Guide be modified to reflect the various suggestions for improvement. The following re-characterizes the seven steps in light of these recommendations:

1. **Designate COPR and Form the Team (see Recommendation 8)**
The modification of this step is meant to place more responsibility on the Contracting Officer Performance Representative ("COPR") to assist the Contracting Officer in coordinating program and technical input for performance management throughout the life cycle of the acquisition, as well as take responsibility for performance management.
2. **Assess Baseline Performance and Desired Outcomes**
The modification of this step is meant to reinforce the practice of selecting outcome measures and assessing the existing baseline at the beginning of an acquisition—all with an eye toward improving the performance need/requirements definition.
3. **Examine Private Sector and Public Sector Solutions**
This step remains the same, with the results of market research conducted included in the "Baseline Performance Case" to ensure the agency has its finger on the pulse of market innovation in a particular service area.

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- 4. Select Transformational or Transactional PBSA Model**
This step reflects the two categories of PBSA suggested by the Panel—as part of an effort to move beyond a one-size-fits-all use of PBSA and provide clarification on when to use a SOO vs. PWS.
- 5. Focus on Key Performance Indicators**
This refinement reflects the Panel’s desire to limit the number of performance measures included in a PBSA contract to a “sampling” or representative index of measures.
- 6. Select the Right Contractor**
This step remains the same.
- 7. Manage, Monitor and Improve Performance**
This step would be modified to include the establishment of milestones for the vendor to prepare “Performance Improvement Plans” as well as the agency’s review and use of those plans to monitor and improve performance.

Recommendation 8:

Contracting Officer Technical Representatives (COTR’s) in PBSA’s should receive additional training and be re-designated as Contracting Officer Performance Representatives (COPR’s).

Both Findings Four and Five point to deficiencies in post-award contract performance monitoring and management, with contracting staff in particular continually being pressured to focus on getting to contract award. For a performance-based contract to be successful, both elements of the process must be pursued: identifying desired business results up front and then being able to monitor performance.

The Panel believes that improvements in workforce capacity and capability regarding contract oversight in particular may make a significant difference in seeing that performance-based acquisitions are successfully carried out. One way to recognize the importance of this performance monitoring role and to shift the culture is, in circumstances where that individual is overseeing PBSAs, to re-designate the COTR as a COPR. Making this change highlights the distinctive nature of the position while affording those filling it with sufficient education and training to meet demanding oversight requirements. In addition to the traditional contract management and monitoring responsibilities of a COTR, the COPR would also assist the Integrated Project Team and CO in

- Soliciting input from program and technical staff regarding the approach to be used for acquisition performance management,
- Creating a baseline performance case,
- Developing the SOO or PWS and,

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- Selecting key performance measures.

In addition, the Panel recommends that program staff and line contracting officers associated with performance-based acquisitions be given advanced training in performance management—particularly in the development of performance measures and post-award contract performance monitoring and management. Specifically for the creation of the COPR, the Defense Acquisition University and the Federal Acquisition Institute should jointly develop a formal educational certification program for those occupying this new position. For Transformational PBSA's, every effort should be made to see that key staff receive appropriate training and skill sets.

Recommendation 9:

Improved Data on PBSA Usage and Enhanced Oversight by OFPP on Proper PBSA Implementation Using an “Acquisition Performance Assessment Rating Tool” A-PART.

Under Finding Seven, the Panel noted the lack of good data on the use and success of PBSA across the government. In addition, where agencies have purported to have conducted performance-based acquisitions, the Government Accountability Office in a number of cases has questioned whether the procurement would actually meet the criteria included in the Federal Acquisition Regulation. As one way to regularize and make more consistent the Administration's ability to oversee and assess the performance of PBSA's, the Panel recommends that OFPP see that a tool similar to the Office of Management and Budget's (OMB) Program Assessment Rating Tool (PART) is developed.

OMB uses the PART as a systematic method for measuring program performance across the Federal government. It essentially includes a series of questions that help the evaluator to see whether the program is in fact meeting the mission requirements it was designed to support. The use of the PART has helped improve the clarity of OMB guidance on the Government Performance and Results Act (GPRA) as well as engaged OMB more aggressively in reviewing its implementation.

In a similar vein, the Panel is recommending that OFPP develop a checklist that reflects how well a particular acquisition comports with the basic elements of the seven steps guide. Using this methodological and accountable approach to PBSA implementation not only provides better data, but also helps agencies learn how to implement PBSA in a more structured and accountable manner. The Panel feels this rigor is needed in the early stages of PBSA's implementation until agencies are comfortable and competent in the use of the tool. This requirement would sunset after three years, unless OMB and agencies felt the use of the A-PART process should continue.

Using the A-PART, agencies should then fill out the questions upon award of a performance-based contract and maintain the information on file. Each year OFPP should sample the A-PART documents to see if PBSA implementation is in fact being handled properly

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in each agency, with revised guidance provided to the agencies based on the results of these annual assessments.

In addition, OMB guidance on FPDS reporting should be revised to reflect the distinction between Transformational and Transactional performance-based acquisitions (including both contracts and task orders) as described in Recommendation One.

Recommendation 10:

OFPP should undertake a systematic study on the challenges, costs and benefits of using performance-based acquisition techniques five years from the date of the Panel's delivery of its final report.

While the Panel has heard many witnesses point to either the benefits or shortfalls of adopting performance-based techniques for acquiring services, there has been no systematic government-wide effort to assess fully the merits of the process. As noted previously by the Panel, the last such study was conducted by OFPP in 1998 and while the results were positive, some questioned the validity of its findings. As such the Panel recommendations should not be interpreted as offering a long-term endorsement of PBSA. Rather the Panel aims are directed at improving current implementation and at providing a solid fact-based record for a more thorough assessment of its value.

In light of the concerns raised by so many witnesses on the lack of training and guidance for carrying out performance-based acquisitions, the Panel believes that a concerted effort to address these deficiencies should help to make performance-based acquisitions more effective. However, a systematic review would offer a much more solid basis for concluding whether significant cost and programmatic benefits are in fact achieved through the adoption of performance-based acquisition methods.

As part of this review, OFPP should use the FPDS to identify the various types of performance-based acquisitions in use across the agencies, and examine selected A-PARTS assessments and agency Performance Improvement Plans to assess their contributions to improving the effectiveness of performance-based acquisition awards.

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APPENDIX ONE: Bibliography of PBSA Reports and Studies

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PERFORMANCE-BASED CONTRACTING WORKING GROUP PBC CHRONOLOGY

1. OFPP Policy Letter 91-2, "Service Contracting" April 9, 1991– rescinded in March 2000 FR, http://www.arnet.gov/Library/OFPP/PolicyLetters/Letters/PL91-2_4-9-91.html
2. "On March 15, 1993, the Office of Management and Budget (OMB) Director Leon Panetta requested that 17 major Executive Departments and agencies review their service contracting programs. The purpose of the review was to determine (1) if the service contracts were accomplishing what was intended; (2) whether the contracts were cost effective; and (3) whether inherently governmental functions were being performed by contractors. The results of the reviews indicated that service contracting practices and capabilities are uneven across the Executive branch and that various common management problems need to be addressed." (see intro to OFPP Policy Letter 93-1)
3. OFPP Policy Letter 93-1 "Management Oversight of Service contracting" <http://www.acqnet.gov/Library/OFPP/PolicyLetters/Letters/PL93-1.html>
4. Former VP Gore designated PBC as an integral aspect of the National Performance Review (http://govinfo.library.unt.edu/npr/library_and_then/nprprt/annrpt/sysrpt93/reinven.html for the "Reinventing Federal Procurement" report. Pilot launched October 1994. Director Rivlin led the kick-off ceremony where executive official of the participating agencies signed a governmentwide pledge to participate in the project (Exhibit 5 of OFPP "A Report on the Performance-Based Service Contracting Pilot Project available at www.acqnet.gov under Virtual Library-Policy Documents). www.acqnet.gov/Library/OFPP/PolicyDocs/pbscpilpro.html
5. OFPP Policy Letter "Performance-Based Service Contracting Solicitation/Contract/Task Order Review Checklist" August 9, 1997 www.acqnet.gov/Library/OFPP/PolicyDocs/pbsckls.html
6. FAC 97-01 (Item VII) – FAR Case 95-311, implementing OFPP Policy Letter 91-2 (see 1 above), by revising FAR Parts 7, 37, 42, 46, and 52. All FACs available at <http://www.acqnet.gov/far>
7. "A Report on the Performance-Based Service Contracting Pilot Project" OFPP May 1998. www.acqnet.gov/Library/OFPP/PolicyDocs/pbscpilpro.html

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8. Federal Acquisition Streamlining Act of 1994. See, among others, 10 USC 2220 and 41 USC 263.
9. Government Performance and Results Act of 1993
10. Clinger-Cohen Act of 1996
11. “Guide to Best Practices for Performance-Based Service Contracting” 1998
12. Department of Energy: Lessons Learned Incorporated in Performance-Based Incentive, July 23, 1998 <http://www.gao.gov/archive/1998/rc98223.pdf>
13. National Laboratories: DOE Needs to Assess the Impact of Using Performance-Based Contracts, May 3, 1999 <http://www.gao.gov/archive/1999/rc99141.pdf>
14. Contract management: Trends and Challenges in Acquiring Services, May 22, 2001 -GAO Testimony before the Subcommittee on Technology and Procurement Policy, Committee on Government Reform, House of Representatives. <http://www.gao.gov/new.items/d01753t.pdf>
15. GAO-02-179t Contract management: Improving Services Acquisitions, October 30, 2001 <http://www.gao.gov/new.items/d02179t.pdf>
16. “Guidance Needed for Using Performance-Based Service Contracting” GAO, September 20, 2002 <http://www.gao.gov/new.items/d021049.pdf>
17. President’s Management Agenda <http://www.whitehouse.gov/omb/budget/fy2002/mgmt.pdf>
18. GAO Report 03-443 Federal Procurement: Spending and Workforce Trends, April 30, 2003. <http://www.gao.gov/new.items/d03443.pdf>
19. “Performance-Based Service Acquisition – Contracting for the Future” Interagency Task Force on Performance-Based Service Acquisition, July 2003 <http://www.whitehouse.gov/omb/procurement/0703pbsat.pdf>
20. Section 1431 of the Services Acquisition Reform Act of 2003, Additional Incentive for use of Performance-based Contracting for Services and Section 1433, Clarification of Commercial Services Definition (Title XIV of the National Defense Authorization Act for Fiscal Year 2004). <http://reform.house.gov/UploadedFiles/Title%20XIV%20of%20H.R.%201588%20Conference%20Report.pdf>
21. FAR Case 2004-004, Incentives for the Use of Performance-Based Contracting for Services. This case implements Section 1431 and 1433 of the Services Acquisition Reform Act of

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2003 in 18 above. Go to the link and select FAC -05-04. The case is 2004-004, Item III.:
<http://205.130.237.11/far/facsframe.html>

22. FAR Case 2003-018, Implementing the Task Force Report is, as of 9/7/05, still at OIRA (OMB).
23. GAO-04-715, Defense Management: Opportunities to Enhance the Implementation of Performance-Based Logistics, August 9, 2004 <http://www.gao.gov/new.items/d04715.pdf>
24. OFPP Memo, "Increasing the Use of Performance-Based Service Acquisitions," September 7, 2004 (see <http://www.acqnet.gov> and the memo is on the home page)
25. U.S. Air Force Instruction 63-124, Performance-based service acquisition. August 1, 2005. This publication is available at <http://www.e-publishing.af.mil>
26. GAO-05-966, Defense Management: DOD Needs to Demonstrate That Performance-Based Logistics Contracts Are Achieving Expected Benefits, September 9, 2005
<http://www.gao.gov/cgi-bin/getrpt?GAO-05-966>
27. "Seven Steps to Performance-based service acquisition Guide" linked to the OFPP site at <http://www.acqnet.gov>
28. Acquisition Center of Excellence (ACE) for Services linked to the OFPP site at <http://www.acqnet.gov>
29. OFPP Policy Letter 05-01 "Developing and Managing the Acquisition Workforce" linked to the OFPP site at <http://www.acqnet.gov>

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<p style="text-align: center;">APPENDIX TWO: FINAL PBSA Rule and Side-by-Side Comparison</p>
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FEBRUARY 2, 2006 EFFECTIVE PBSA FAR REGULATION

SUBPART 37.6—PERFORMANCE-BASED ACQUISITION 37.604

Subpart 37.6—Performance-Based Acquisition

37.600 Scope of subpart. This subpart prescribes policies and procedures for acquiring services using performance-based acquisition methods.

37.601 General. (a) Solicitations may use either a performance work statement or a statement of objectives (see 37.602). (b) Performance-based contracts for services shall include— (1) A performance work statement (PWS); (2) Measurable performance standards (i.e., in terms of quality, timeliness, quantity, etc.) and the method of assessing contractor performance against performance standards; and (3) Performance incentives where appropriate. When used, the performance incentives shall correspond to the performance standards set forth in the contract (see 16.402-2). (c) See 12.102(g) for the use of Part 12 procedures for performance-based acquisitions.

37.602 Performance work statement. (a) A Performance work statement (PWS) may be prepared by the Government or result from a Statement of objectives (SOO) prepared by the Government where the offeror proposes the PWS. (b) Agencies shall, to the maximum extent practicable— (1) Describe the work in terms of the required results rather than either “how” the work is to be accomplished or the number of hours to be provided (see 11.002(a)(2) and 11.101); (2) Enable assessment of work performance against measurable performance standards; (3) Rely on the use of measurable performance standards and financial incentives in a competitive environment to encourage competitors to develop and institute innovative and cost-effective methods of performing the work. (c) Offerors use the SOO to develop the PWS; however, the SOO does not become part of the contract. The SOO shall, at a minimum, include— (1) Purpose; (2) Scope or mission; (3) Period and place of performance; (4) Background; (5) Performance objectives, i.e., required results; and (6) Any operating constraints.

37.603 Performance standards. (a) Performance standards establish the performance level required by the Government to meet the contract requirements. The standards shall be measurable and structured to permit an assessment of the contractor’s performance. (b) When offerors propose performance standards in response to a SOO, agencies shall evaluate the proposed standards to determine if they meet agency needs.

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37.604 Quality assurance surveillance plans. Requirements for quality assurance and quality assurance surveillance plans are in Subpart 46.4. The Government may either prepare the quality assurance surveillance plan or require the offerors to submit a proposed quality assurance surveillance plan for the Government's consideration in development of the Government's plan.

Interim Rule	Final Rule: February 2, 2006
<p>FAR 2.101 Definitions: "Performance-based contracting" means structuring all aspects of an acquisition around the purpose of the work to be performed with the contract requirements set forth, in clear, specific, and objective terms with measurable outcomes as opposed to either the manner by which the work is to be performed or broad and imprecise statements of work.</p>	<p>FAR 2.101 Definitions: "Performance-based acquisition (PBA)" means an acquisition structured around the results to be achieved as opposed to the manner by which the work is to be performed.</p>
<p>FAR 7.103(r): (r) Ensuring that knowledge gained from prior acquisitions is used to further refine requirements and acquisition strategies. For services, greater use of performance-based contracting methods and, therefore, fixed-price contracts (see 37.602-5) should occur for follow-on acquisitions.</p>	<p>FAR 7.103(r): (r) Ensuring that knowledge gained from prior acquisitions is used to further refine requirements and acquisition strategies. For services, greater use of performance-based contracting methods (see 37.602-5) should occur for follow-on acquisitions.</p> <p>FAR 7.103(r): DELETED "and, therefore, fixed-price contracts" from the statement "For services, greater use of performance-based acquisition methods and, therefore fixed-price contracts*** should occur for follow-on acquisitions" because the Councils believe the appropriate contract type is based on the level of risk and not the acquisition method.</p>
<p>FAR 11.101(a)(2) and (a)(3): (a) Agencies may select from existing requirements documents, modify or combine existing requirements documents, or create new requirements documents to meet agency needs, consistent with the following order of precedence: (1) Documents mandated for use by law. (2) Performance-oriented documents or function. (3) Detailed design-oriented documents.</p>	<p>FAR 11.101(a)(2) and (a)(3): (a) Agencies may select from existing requirements documents, modify or combine existing requirements documents, or create new requirements documents to meet agency needs, consistent with the following order of precedence:.... (2) Performance-oriented documents...</p> <p>FAR 11.101(a)(2): DELETED "or function" because the Councils concluded that the term "function" could be confused with "detailed design-oriented documents" at 11.101(a)(3) thus confusing the order of precedence for requirements documents.</p>

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<p>FAR 16.505(a)(3): (3) Performance-based work statements must be used to the maximum extent practicable, if the contract or order is for services (see 37.102(a)).</p>	<p>FAR 16.505(a)(3): (3) Performance-based acquisition methods must be used to the maximum extent practicable, if the contract or order is for services (see 37.102(a)).</p> <p><i>FAR 16.505(a)(3):</i> CHANGED “performance work statements must be used to the maximum extent practicable” to “Performance-based acquisition methods must be used to the maximum extent practicable” since either a SOO or PWS can be used in the solicitation.</p>
<p><i>FAR 37.000:</i></p> <p>This part prescribes policy and procedures that are specific to the acquisition and management of services by contract. This part applies to all contracts for services regardless of the type of contract or kind of service being acquired. This part requires the use of performance-based contracting to the maximum extent practicable and prescribes policies and procedures for use of performance-based contracting methods (see subpart 37.6). Additional guidance for research and development services is in Part 35; architect-engineering services is in Part 36; information technology is in Part 39; and transportation services is in Part 47. Parts 35, 36, 39, and 47 take precedence over this part in the event of inconsistencies. This part includes, but is not limited to, contracts for services to which the Service Contract Act of 1965, as amended, applies (see Subpart 22.10).</p>	<p>FAR 37.000:</p> <p><i>This part prescribes policy and procedures that are specific to the acquisition and management of services by contract or orders. This part applies to all contracts for services regardless of the type of contract or kind of service being acquired. This part requires the use of performance-based acquisition to the maximum extent practicable and prescribes policies and procedures for use of performance-based acquisition methods (see subpart 37.6). Additional guidance for research and development services is in Part 35; architect-engineering services is in Part 36; information technology is in Part 39; and transportation services is in Part 47. Parts 35, 36, 39, and 47 take precedence over this part in the event of inconsistencies. This part includes, but is not limited to, contracts for services to which the Service Contract Act of 1965, as amended, applies (see Subpart 22.10).</i></p> <p><i>FAR 37.000</i></p> <p>ADDED “or orders” after “contracts” to clarify the Subpart applies to contracts and orders</p> <p><i>Various Subparts in Part 37:</i> CHANGED the terminology from “performance-based service acquisitions” to “performance-based service acquisitions” to “performance-based acquisitions” since Part 37 only relates to service acquisitions.</p>
<p>FAR 37.102(e): Did not exist.</p>	<p>FAR 37.102(e): (e) Agency program officials are responsible for accurately describing the need to be filled, or problem to be resolved, through service contracting in a manner that ensures full understanding and responsive performance by contractors and, in so doing, should obtain assistance from contracting officials, as needed.</p>

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	<p><i>FAR 37.102(e)</i> ADDED a requirement that the agency program officials describe the need to be filled using performance-based acquisition methods to the maximum extent practicable to facilitate performance-based acquisitions.</p>
<p><u>FAR 37.601</u></p> <p>(a) Performance-based contracting methods are intended to ensure that required performance quality levels are achieved and that total payment is related to the degree that services performed or outcomes achieved meet contract standards. Performance-based contracts or task orders--</p> <p>(1) Describe the requirements in terms of results required rather than the methods of performance of the work;</p> <p>(2) <u>Use measurable performance standards (i.e., in terms of quality, timeliness, quantity, etc.) and quality assurance surveillance plans (see 46.103(a) and 46.401(a));</u></p> <p>(3) Specify procedures for reductions46.103(a) and 46.401(a));</p> <p>(3) Specify procedures for reductions of fee or for reductions to the price of a fixed-price contract when services are not performed or do not meet contract requirements (see 46.407); and</p> <p>(4) Include performance incentives where appropriate.</p> <p>(b) See 12.102(g) for the use of Part 12 procedures for performance-based contracting</p>	<p><u>FAR 37.601</u></p> <p>(Deleted and moved to a new FAR section, 37.603)</p> <p><i>FAR 37.601(a):</i></p> <p>DELETED 37.601(a) of the proposed rule which stated the principal objectives of PBSAs since the principal objectives are addressed in the definition. RELOCATED and revised the detailed provisions for performance standards to a new FAR section, 37.603, to permit expanded coverage. The Councils clarified the language to indicate that performance standards must be measurable and ADDED “method of assessing contractor performance” to the required elements of a PBSA since the quality assurance surveillance plan is not a mandatory element and contractors should know how they will be assessed during contract performance.</p> <p>REVISED the performance incentives coverage to simply refer to the provisions at 16.402-2 since the only unique requirement for PBSAs is the requirement that performance incentives correspond to the performance standards.</p>
<p><u>FAR 37.602(b):</u></p> <p>(b) When preparing statements of work, agencies shall, to the maximum extent practicable --</p> <p>(1) Describe the work in terms of “what” is to be the required output rather than either “how” the work is to be accomplished or the number of hours to be provided (see 11.002(a)(2) and 11.101);</p> <p>(2) Enable assessment of work performance against measurable performance standards;</p> <p>(3) Rely on the use of measurable performance standards and financial incentives in a competitive environment to encourage competitors to develop and institute innovative and cost-effective methods of performing the work; and</p>	<p><i>FAR 37.602(b):</i></p> <p>In paragraph (b) REVERTED back to the existing FAR coverage with minor modifications because the Councils believe the prior coverage correctly detailed the requirements.</p>

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(4) Avoid combining requirements into a single acquisition that is too broad for the agency or a prospective contractor to manage effectively.	
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